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The Utilitarians

Jeremy Bentham

Principles of Morals and Legislation

John Stuart Mill

On Liberty *and* Utilitarianism



philosophy

The Utilitarians

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Principles of Morals and Legislation

John Stuart Mill—
On Liberty and *Utilitarianism*

Utilitarianism is now generally agreed to be a superseded theory, but it was not the utter quixotism it sometimes seems: from the early years of George III through most of the reign of Victoria the Benthamites were the voice of liberalism and the driving force behind the great reform to make the British government the representative and guardian of its people. Utilitarianism was an ethic, an attempt to evaluate the moral worth of voluntary actions, and the touchstone was this: an action deserved approval insofar as it promoted the total quantity of happiness in the world, or, in the better-known phrase, insofar as it produced "the greatest happiness of the greatest number." Jeremy Bentham ramified his theory in what he considered "scientific" fashion, but in his hands it became so scientific, so impersonally general that it failed to gain popularity. It was not until John Stuart Mill introduced a sympathetic concern for the individual man that the theory throve. Reprinted in their entirety in this volume are its three outstanding statements: Bentham's original presentation in his *Principles,* Mill's adaptation of it in his *Utilitarianism,* and, finally, Mill's classic plea for personal freedom and struggle against uniformity, *On Liberty.*

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THE UTILITARIANS



JEREMY BENTHAM (1748–1832) was the son of a London attorney. Sent to Oxford at the age of twelve to study law, he soon realized that he strongly disagreed with the lectures he heard from the great Blackstone. He decided to forego the practice of law in favor of study and an attempt to work out his own "scientific" system of law. In 1776 he published *A Fragment on Government*, written in opposition to Blackstone. *An Introduction to the Principles of Morals and Legislation*, one of the basic texts of Utilitarianism, was first published in 1789. Bentham's reputation was established on the Continent largely through the efforts of Etienne Dumont, who published a three-volume French translation of his collected writings in 1802. The meeting of James Mill and Jeremy Bentham in 1808 led to the formation of the Benthamites, a strong force in the move toward democracy in England. Their efforts were culminated in the great Reform Bill of 1832 which was passed shortly after Bentham's death.

JOHN STUART MILL (1806–1873) has achieved renown not only as a philosopher, economist, and political and social reformer, but also as one of the outstanding child prodigies of all time. As he records in his *Autobiography* (1873), he studied Greek at the age of three, Latin at eight, and wrote a history of Roman law at ten. In his youth he followed his father, James, as a disciple of Bentham. However, the younger Mill suffered a breakdown at twenty-one, and with recovery came rejection of many of his former beliefs. He developed a thorough restatement of Utilitarianism which helped establish him as one of the foremost intellectual spokesmen of liberalism in the nineteenth century. His writings include: the *System of Logic* (1843), the *Principles of Political Economy* (1848), *On Liberty*, (1849) and *Utilitarianism* (1863).

THE UTILITARIANS

AN INTRODUCTION TO THE PRINCIPLES OF MORALS AND LEGISLATION

JEREMY BENTHAM

UTILITARIANISM and ON LIBERTY

JOHN STUART MILL

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AN INTRODUCTION TO THE PRINCIPLES OF MORALS AND LEGISLATION

NOTE ON THE TEXT OF BENTHAM'S PRINCIPLES

This edition of Jeremy Bentham's *Principles of Morals and Legislation* reproduces the text and notes of the 1823 edition, the edition containing Bentham's final revisions and corrections. The work was originally published in 1789. The comment in the first sentence of the Preface refers to the fact that most of the book had been written and printed by 1780, but it remained unissued for nine years.

PREFACE.
(1789)

The following sheets were, as the note on the opposite page expresses, printed so long ago as the year 1780. The design, in pursuance of which they were written, was not so extensive as that announced by the present title. They had at that time no other destination than that of serving as an introduction to a plan of a penal code *in terminis*, designed to follow them, in the same volume.

The body of the work had received its completion according to the then present extent of the author's views, when, in the investigation of some flaws he had discovered, he found himself unexpectedly entangled in an unsuspected corner of the metaphysical maze. A suspension, at first not apprehended to be more than a temporary one, necessarily ensued: suspension brought on coolness, and coolness, aided by other concurrent causes, ripened into disgust.

Imperfections pervading the whole mass had already been pointed out by the sincerity of severe and discerning friends; and conscience had certified the justness of their censure. The inordinate length of some of the chapters, the apparent inutility of others, and the dry and metaphysical turn of the whole, suggested an apprehension, that, if published in its present form, the work would contend under great disadvantages for any chance, it might on other accounts possess, of being read, and consequently of being of use.

But, though in this manner the idea of completing the present work slid insensibly aside, that was not by any means the case with the considerations which had led him to engage in

it. Every opening, which promised to afford the lights he stood in need of, was still pursued: as occasion arose, the several departments connected with that in which he had at first engaged, were successively explored; insomuch that, in one branch or other of the pursuit, his researches have nearly embraced the whole field of legislation.

Several causes have conspired at present to bring to light, under this new title, a work which under its original one had been imperceptibly, but as it had seemed irrevocably, doomed to oblivion. In the course of eight years, materials for various works, corresponding to the different branches of the subject of legislation, had been produced, and some nearly reduced to shape: and, in every one of those works, the principles exhibited in the present publication had been found so necessary, that, either to transcribe them piece-meal, or to exhibit them somewhere where they could be referred to in the lump, was found unavoidable. The former course would have occasioned repetitions too bulky to be employed without necessity in the execution of a plan unavoidably so voluminous: the latter was therefore indisputably the preferable one.

To publish the materials in the form in which they were already printed, or to work them up into a new one, was therefore the only alternative: the latter had all along been his wish, and, had time and the requisite degree of alacrity been at command, it would as certainly have been realised. Cogent considerations, however, concur, with the irksomeness of the task, in placing the accomplishment of it at present at an unfathomable distance.

Another consideration is, that the suppression of the present work, had it been ever so decidedly wished, is no longer altogether in his power. In the course of so long an interval, various incidents have introduced copies into various hands, from some of which they have been transferred, by deaths and other accidents, into others that are unknown to him. Detached, but considerable extracts, have even been published, without any dishonourable views, (for the name of the author was very honestly subjoined to them,) but without his privity, and in publications undertaken without his knowledge.

It may perhaps be necessary to add, to complete his excuse

for offering to the public a work pervaded by blemishes, which have not escaped even the author's partial eye, that the censure, so justly bestowed upon the form, did not extend itself to the matter.

In sending it thus abroad into the world with all its imperfections upon its head, he thinks it may be of assistance to the few readers he can expect, to receive a short intimation of the chief particulars, in respect of which it fails of corresponding with his maturer views. It will thence be observed how in some respects it fails of quadrating with the design announced by its original title, as in others it does with that announced by the one it bears at present.

An introduction to a work which takes for its subject the totality of any science, ought to contain all such matters, and such matters only, as belong in common to every particular branch of that science, or at least to more branches of it than one. Compared with its present title, the present work fails in both ways of being conformable to that rule.

As an introduction to the principles of *morals*, in addition to the analysis it contains of the extensive ideas signified by the terms *pleasure*, *pain*, *motive*, and *disposition*, it ought to have given a similar analysis of the not less extensive, though much less determinate, ideas annexed to the terms *emotion*, *passion*, *appetite*, *virtue*, *vice*, and some others, including the names of the particular *virtues* and *vices*. But as the true, and, if he conceives right, the only true ground-work for the development of the latter set of terms, has been laid by the explanation of the former, the completion of such a dictionary, so to style it, would, in comparison of the commencement, be little more than a mechanical operation.

Again, as an introduction to the principles of *legislation in general*, it ought rather to have included matters belonging exclusively to the *civil* branch, than matters more particularly applicable to the *penal*: the latter being but a means of compassing the ends proposed by the former. In preference therefore, or at least in priority, to the several chapters which will be found relative to *punishment*, it ought to have exhibited a set of propositions which have since presented themselves to him as affording a standard for the operations performed by

government, in the creation and distribution of proprietary and other civil rights. He means certain axioms of what may be termed *mental pathology*, expressive of the connection betwixt the feelings of the parties concerned, and the several classes of incidents, which either call for, or are produced by, operations of the nature above mentioned.[1]

The consideration of the division of offences, and everything else that belongs to offences, ought, besides, to have preceded the consideration of punishment: for the idea of *punishment* presupposes the idea of *offence*: punishment, as such, not being inflicted but in consideration of offence.

Lastly, the analytical discussions relative to the classification of offences would, according to his present views, be transferred to a separate treatise, in which the system of legislation is considered solely in respect of its form: in other words, in respect of its *method* and *terminology*.

In these respects the performance fails of coming up to the author's own ideas of what should have been exhibited in a work, bearing the title he has now given it, viz. that of an *Introduction to the Principles of Morals and Legislation*. He knows however of no other that would be less unsuitable: nor in particular would so adequate an intimation of its actual contents have been given, by a title corresponding to the more limited design, with which it was written: viz. that of serving as an *introduction to a penal code*.

Yet more. Dry and tedious as a great part of the discussions it contains must unavoidably be found by the bulk of readers, he knows not how to regret the having written them, nor even the having made them public. Under every head, the practical uses, to which the discussions contained under that head appeared applicable, are indicated: nor is there, he believes, a single proposition that he has not found occasion to build upon in the penning of some article or other of those provisions of detail, of which a body of law, authoritative or unauthoritative, must be composed. He will venture to specify particularly, in this view, the several chapters shortly characterized by the words *Sensibility*, *Actions*, *Intentionality*, *Consciousness*, *Motives*, *Dispositions*, *Consequences*. Even in the enormous chapter on the division of offences, which,

notwithstanding the forced compression the plan has undergone in several of its parts, in manner there mentioned, occupies no fewer than one hundred and four closely printed quarto pages,[2] the ten concluding ones are employed in a statement of the practical advantages that may be reaped from the plan of classification which it exhibits. Those in whose sight the Defence of Usury has been fortunate enough to find favour, may reckon as one instance of those advantages the discovery of the principles developed in that little treatise. In the preface to an anonymous tract published so long ago as in 1776,[3] he had hinted at the utility of a natural classification of offences, in the character of a test for distinguishing genuine from spurious ones. The case of usury is one among a number of instances of the truth of that observation. A note at the end of Sect. xxxv. Chap. xvi. of the present publication, may serve to show how the opinions, developed in that tract, owed their origin to the difficulty experienced in the attempt to find a place in his system for that imaginary offence. To some readers, as a means of helping them to support the fatigue of wading through an analysis of such enormous length, he would almost recommend the beginning with those concluding pages.

One good at least may result from the present publication; viz. that the more he has trespassed on the patience of the reader on this occasion, the less need he will have so to do on future ones: so that this may do to those, the office which is done, by books of pure mathematics, to books of mixed mathematics and natural philosophy. The narrower the circle of readers is, within which the present work may be condemned to confine itself, the less limited may be the number of those to whom the fruits of his succeeding labours may be found accessible. He may therefore in this respect find himself in the condition of those philosophers of antiquity, who are represented as having held two bodies of doctrine, a popular and an occult one: but, with this difference, that in his instance the occult and the popular will, he hopes, be found as consistent as in those they were contradictory; and that in his production whatever there is of occultness has been the pure result of sad necessity, and in no respect of choice.

Having, in the course of this advertisement, had such frequent occasion to allude to different arrangements, as having been suggested by more extensive and maturer views, it may perhaps contribute to the satisfaction of the reader, to receive a short intimation of their nature: the rather, as, without such explanation, references, made here and there to unpublished works, might be productive of perplexity and mistake. The following then are the titles of the works by the publication of which his present designs would be completed. They are exhibited in the order which seemed to him best fitted for apprehension, and in which they would stand disposed, were the whole assemblage ready to come out at once: but the order, in which they will eventually appear, may probably enough be influenced in some degree by collateral and temporary considerations.

Part the 1st. Principles of legislation in matters of *civil*, more distinctively termed *private distributive*, or for shortness, *distributive, law*.

Part the 2nd. Principles of legislation in matters of *penal law*.

Part the 3rd. Principles of legislation in matters of *procedure*: uniting in one view the *criminal* and *civil* branches, between which no line can be drawn, but a very indistinct one, and that continually liable to variation.

Part the 4th. Principles of legislation in matters of *reward*.

Part the 5th. Principles of legislation in matters of *public distributive*, more concisely as well as familiarly termed *constitutional*, law.

Part the 6th. Principles of legislation in matters of *political tactics*: or of the art of maintaining *order* in the proceedings of political assemblies, so as to direct them to the end of their institution: viz. by a system of rules, which are to the constitutional branch, in some respects, what the law of procedure is to the civil and the penal.

Part the 7th. Principles of legislation in matters betwixt nation and nation, or, to use a new though not inexpressive appellation, in matters of *international* law.

Part the 8th. Principles of legislation in matters of *finance*.

Part the 9th. Principles of legislation in matters of *political economy*.

Part the 10th. Plan of a body of law, complete in all its branches, considered in respect of its *form*; in other words, in respect of its method and terminology; including a view of the origination and connexion of the ideas expressed by the short list of terms, the exposition of which contains all that can be said with propriety to belong to the head of *universal jurisprudence*.[4]

The use of the principles laid down under the above several heads is to prepare the way for the body of law itself exhibited *in terminis*; and which to be complete, with reference to any political state, must consequently be calculated for the meridian, and adapted to the circumstances, of some one such state in particular.

Had he an unlimited power of drawing upon *time*, and every other condition necessary, it would be his wish to postpone the publication of each part to the completion of the whole. In particular, the use of the ten parts, which exhibit what appear to him the dictates of utility in every line, being no other than to furnish reasons for the several corresponding provisions contained in the body of law itself, the exact truth of the former can never be precisely ascertained, till the provisions, to which they are destined to apply, are themselves ascertained, and that *in terminis*. But as the infirmity of human nature renders all plans precarious in the execution, in proportion as they are extensive in the design, and as he has already made considerable advances in several branches of the theory, without having made correspondent advances in the practical applications, he deems it more than probable, that the eventual order of publication will not correspond exactly with that which, had it been equally practicable, would have appeared most eligible. Of this irregularity the unavoidable result will be, a multitude of imperfections, which, if the execution of the body of law *in terminis* had kept pace with the development of the principles, so that each part had been adjusted and corrected by the other, might have been avoided. His conduct however will be the less swayed by this inconvenience, from his suspecting it to be of the number of those

in which the personal vanity of the author is much more concerned, than the instruction of the public: since whatever amendments may be suggested in the detail of the principles, by the literal fixation of the provisions to which they are relative, may easily be made in a corrected edition of the former, succeeding upon the publication of the latter.

In the course of the ensuing pages, references will be found, as already intimated, some to the plan of a penal code to which this work was meant as an introduction, some to other branches of the above-mentioned general plan, under titles somewhat different from those, by which they have been mentioned here. The giving this warning is all which it is in the author's power to do, to save the reader from the perplexity of looking out for what has not as yet any existence. The recollection of the change of plan will in like manner account for several similar incongruities not worth particularising.

Allusion was made, at the outset of this advertisement, to some unspecified difficulties, as the causes of the original suspension, and unfinished complexion, of the present work. Ashamed of his defeat, and unable to dissemble it, he knows not how to refuse himself the benefit of such an apology as a slight sketch of the nature of those difficulties may afford.

The discovery of them was produced by the attempt to solve the questions that will be found at the conclusion of the volume: *Wherein consisted the identity and* completeness *of a law? What the distinction, and where the separation, between* a penal *and a* civil *law? What the distinction, and where the separation, between the* penal *and* other branches *of* the law?

To give a complete and correct answer to these questions, it is but too evident that the relations and dependencies of every part of the legislative system, with respect to every other, must have been comprehended and ascertained. But it is only upon a view of these parts themselves, that such an operation could have been performed. To the accuracy of such a survey one necessary condition would therefore be, the complete existence of the fabric to be surveyed. Of the performance of this condition no example is as yet to be met with any where. *Common* law, as it styles itself in England, *judiciary* law, as it

might more aptly be styled every where, that fictitious composition which has no known person for its author, no known assemblage of words for its substance, forms every where the main body of the legal fabric: like that fancied ether, which, in default of sensible matter, fills up the measure of the universe. Shreds and scraps of real law, stuck on upon that imaginary ground, compose the furniture of every national code. What follows?—that he who, for the purpose just mentioned or for any other, wants an example of a complete body of law to refer to, must begin with making one.

There is, or rather there ought to be, a *logic* of the *will*, as well as of the *understanding:* the operations of the former faculty, are neither less susceptible, nor less worthy, than those of the latter, of being delineated by rules. Of these two branches of that recondite art, Aristotle saw only the latter: succeeding logicians, treading in the steps of their great founder, have concurred in seeing with no other eyes. Yet so far as a difference can be assigned between branches so intimately connected, whatever difference there is, in point of importance, is in favour of the logic of the will. Since it is only by their capacity of directing the operations of this faculty, that the operations of the understanding are of any consequence.

Of this logic of the will, the science of *law*, considered in respect of its *form*, is the most considerable branch,—the most important application. It is, to the art of legislation, what the science of anatomy is to the art of medicine: with this difference, that the subject of it is what the artist has to work *with*, instead of being what he has to operate *upon*. Nor is the body politic less in danger from a want of acquaintance with the one science, than the body natural from ignorance in the other. One example, amongst a thousand that might be adduced in proof of this assertion, may be seen in the note which terminates this volume.

Such then were the difficulties: such the preliminaries:—an unexampled work to achieve, and then a new science to create: a new branch to add to one of the most abstruse of sciences.

Yet more: a body of proposed law, how complete soever,

would be comparatively useless and uninstructive, unless explained and justified, and that in every tittle, by a continued accompaniment, a perpetual commentary of *reasons*:[5] which reasons, that the comparative value of such as point in opposite directions may be estimated, and the conjunct force, of such as point in the same direction, may be felt, must be marshalled, and put under subordination to such extensive and leading ones as are termed *principles*. There must be therefore, not one system only, but two parallel and connected systems, running on together, the one of legislative provisions, the other of political reasons, each affording to the other correction and support.

Are enterprises like these achievable? He knows not. This only he knows, that they have been undertaken, proceeded in, and that some progress has been made in all of them. He will venture to add, if at all achievable, never at least by one, to whom the fatigue of attending to discussions, as arid as those which occupy the ensuing pages, would either appear useless, or feel intolerable. He will repeat it boldly (for it has been said before him), truths that form the basis of political and moral science are not to be discovered but by investigations as severe as mathematical ones, and beyond all comparison more intricate and extensive. The familiarity of the terms is a presumption, but it is a most fallacious one, of the facility of the matter. Truths in general have been called stubborn things: the truths just mentioned are so in their own way. They are not to be forced into detached and general propositions, unincumbered with explanations and exceptions. They will not compress themselves into epigrams. They recoil from the tongue and the pen of the declaimer. They flourish not in the same soil with sentiment. They grow among thorns; and are not to be plucked, like daisies, by infants as they run. Labour, the inevitable lot of humanity, is in no track more inevitable than here. In vain would an Alexander bespeak a peculiar road for royal vanity, or a Ptolemy, a smoother one, for royal indolence. There is no *King's Road*, no *Stadtholder's Gate*, to legislative, any more than to mathematic science.

CHAPTER I.

OF THE PRINCIPLE OF UTILITY.

I. *Mankind governed by pain and pleasure.* Nature has placed mankind under the governance of two sovereign masters, *pain* and *pleasure*. It is for them alone to point out what we ought to do, as well as to determine what we shall do. On the one hand the standard of right and wrong, on the other the chain of causes and effects, are fastened to their throne. They govern us in all we do, in all we say, in all we think: every effort we can make to throw off our subjection, will serve but to demonstrate and confirm it. In words a man may pretend to abjure their empire: but in reality he will remain subject to it all the while. The *principle of utility* [1] recognises this subjection, and assumes it for the foundation of that system, the object of which is to rear the fabric of felicity by the hands of reason and of law. Systems which attempt to question it, deal in sounds instead of sense, in caprice instead of reason, in darkness instead of light.

But enough of metaphor and declamation: it is not by such means that moral science is to be improved.

II. *Principle of utility, what.* The principle of utility is the foundation of the present work: it will be proper therefore at the outset to give an explicit and determinate account of what is meant by it. By the principle [2] of utility is meant that principle which approves or disapproves of every action whatsoever, according to the tendency which it appears to have to augment or diminish the happiness of the party whose interest is in question: or, what is the same thing in other words, to promote or to oppose that happiness. I say of every

action whatsoever; and therefore not only of every action of a private individual, but of every measure of government.

III. *Utility, what.* By utility is meant that property in any object, whereby it tends to produce benefit, advantage, pleasure, good, or happiness, (all this in the present case comes to the same thing) or (what comes again to the same thing) to prevent the happening of mischief, pain, evil, or unhappiness to the party whose interest is considered: if that party be the community in general, then the happiness of the community: if a particular individual, then the happiness of that individual.

IV. *Interest of the community, what.* The interest of the community is one of the most general expressions that can occur in the phraseology of morals: no wonder that the meaning of it is often lost. When it has a meaning, it is this. The community is a fictitious *body*, composed of the individual persons who are considered as constituting as it were its *members*. The interest of the community then is, what?—the sum of the interests of the several members who compose it.

V. It is in vain to talk of the interest of the community, without understanding what is the interest of the individual.[3] A thing is said to promote the interest, or to be *for* the interest, of an individual, when it tends to add to the sum total of his pleasures: or, what comes to the same thing, to diminish the sum total of his pains.

VI. *An action conformable to the principle of utility, what.* An action then may be said to be conformable to the principle of utility, or, for shortness sake, to utility, (meaning with respect to the community at large) when the tendency it has to augment the happiness of the community is greater than any it has to diminish it.

VII. *A measure of government conformable to the principle of utility, what.* A measure of government (which is but a particular kind of action, performed by a particular person or persons) may be said to be conformable to or dictated by the principle of utility, when in like manner the tendency which it has to augment the happiness of the community is greater than any which it has to diminish it.

VIII. *Laws or dictates of utility, what.* When an action, or

in particular a measure of government, is supposed by a man to be conformable to the principle of utility, it may be convenient, for the purposes of discourse, to imagine a kind of law or dictate, called a law or dictate of utility: and to speak of the action in question, as being conformable to such law or dictate.

IX. *A partizan of the principle of utility, who.* A man may be said to be a partizan of the principle of utility, when the approbation or disapprobation he annexes to any action, or to any measure, is determined by and proportioned to the tendency which he conceives it to have to augment or to diminish the happiness of the community: or in other words, to its conformity or unconformity to the laws or dictates of utility.

X. *Ought, ought not, right and wrong, &c. how to be understood.* Of an action that is conformable to the principle of utility one may always say either that it is one that ought to be done, or at least that it is not one that ought not to be done. One may say also, that it is right it should be done; at least that it is not wrong it should be done: that it is a right action; at least that it is not a wrong action. When thus interpreted, the words *ought*, and *right* and *wrong*, and others of that stamp, have a meaning: when otherwise, they have none.

XI. *To prove the rectitude of this principle is at once unnecessary and impossible.* Has the rectitude of this principle been ever formally contested? It should seem that it had, by those who have not known what they have been meaning. Is it susceptible of any direct proof? it should seem not: for that which is used to prove every thing else, cannot itself be proved: a chain of proofs must have their commencement somewhere. To give such proof is as impossible as it is needless.

XII. *It has seldom, however, as yet been consistently pursued.* Not that there is or ever has been that human creature breathing, however stupid or perverse, who has not on many, perhaps on most occasions of his life, deferred to it. By the natural constitution of the human frame, on most occasions of their lives men in general embrace this principle, without thinking of it: if not for the ordering of their own actions, yet for the trying of their own actions, as well as of those of other

men. There have been, at the same time, not many, perhaps, even of the most intelligent, who have been disposed to embrace it purely and without reserve. There are even few who have not taken some occasion or other to quarrel with it, either on account of their not understanding always how to apply it, or on account of some prejudice or other which they were afraid to examine into, or could not bear to part with. For such is the stuff that man is made of: in principle and in practice, in a right track and in a wrong one, the rarest of all human qualities is consistency.

XIII. *It can never be consistently combated.* When a man attempts to combat the principle of utility, it is with reasons drawn, without his being aware of it, from that very principle itself.[4] His arguments, if they prove any thing, prove not that the principle is *wrong*, but that, according to the applications he supposes to be made of it, it is *misapplied*. Is it possible for a man to move the earth? Yes; bnt he must first find out another earth to stand upon.

XIV. *Course to be taken for surmounting prejudices that may have been entertained against it.* To disprove the propriety of it by arguments is impossible; but, from the causes that have been mentioned, or from some confused or partial view of it, a man may happen to be disposed not to relish it. Where this is the case, if he thinks the settling of his opinions on such a subject worth the trouble, let him take the following steps, and at length, perhaps, he may come to reconcile himself to it.

1. Let him settle with himself, whether he would wish to discard this principle altogether; if so, let him consider what it is that all his reasonings (in matters of politics especially) can amount to?

2. If he would, let him settle with himself, whether he would judge an act without any principle, or whether there is any other he would judge and act by?

3. If there be, let him examine and satisfy himself whether the principle he thinks he has found is really any separate intelligible principle; or whether it be not a mere principle in words, a kind of phrase, which at bottom expresses neither more nor less than the mere averment of his own unfounded

sentiments; that is, what in another person he might be apt to call caprice?

4. If he is inclined to think that his own approbation or disapprobation, annexed to the idea of an act, without any regard to its consequences, is a sufficient foundation for him to judge and act upon, let him ask himself whether his sentiment is to be a standard of right and wrong, with respect to every other man, or whether every man's sentiment has the same privilege of being a standard to itself?

5. In the first case, let him ask himself whether his principle is not despotical, and hostile to all the rest of human race?

6. In the second case, whether it is not anarchial, and whether at this rate there are not as many different standards of right and wrong as there are men? and whether even to the same man, the same thing, which is right to-day, may not (without the least change in its nature) be wrong to-morrow? and whether the same thing is not right and wrong in the same place at the same time? and in either case, whether all argument is not at an end? and whether, when two men have said, 'I like this,' and 'I don't like it,' they can (upon such a principle) have any thing more to say?

7. If he should have said to himself, No: for that the sentiment which he proposes as a standard must be grounded on reflection, let him say on what particulars the reflection is to turn? if on particulars having relation to the utility of the act, then let him say whether this is not deserting his own principle, and borrowing assistance from that very one in opposition to which he sets it up: or if not on those particulars, on what other particulars?

8. If he should be for compounding the matter, and adopting his own principle in part, and the principle of utility in part, let him say how far he will adopt it?

9. When he has settled with himself where he will stop, then let him ask himself how he justifies to himself the adopting it so far? and why he will not adopt it any farther?

10. Admitting any other principle than the principle of utility to be a right principle, a principle that it is right for a man to pursue; admitting (what is not true) that the word *right* can have a meaning without reference to utility, let him

say whether there is any such thing as a *motive* that a man can have to pursue the dictates of it: if there is, let him say what that motive is, and how it is to be distinguished from those which enforce the dictates of utility: if not, then lastly let him say what it is this other principle can be good for?

utility vs other motives for

CHAPTER II.

OF PRINCIPLES ADVERSE TO THAT OF UTILITY.

I. *All other principles than that of utility must be wrong.* If the principle of utility be a right principle to be governed by, and that in all cases, it follows from what has been just observed, that whatever principle differs from it in any case must necessarily be a wrong one. To prove any other principle, therefore, to be a wrong one, there needs no more than just to show it to be what it is, a principle of which the dictates are in some point or other different from those of the principle of utility: to state it is to confute it.

II. *Ways in which a principle may be wrong.* A principle may be different from that of utility in two ways: 1. By being constantly opposed to it: this is the case with a principle which may be termed the principle of *asceticism.*[5] 2. By being sometimes opposed to it, and sometimes not, as it may happen: this is the case with another, which may be termed the principle of *sympathy* and *antipathy*.

III. *Principle of asceticism, what.* By the principle of asceticism I mean that principle, which, like the principle of utility, approves or disapproves of any action, according to the tendency which it appears to have to augment or diminish the happiness of the party whose interest is in question; but in an inverse manner: approving of actions in as far as they tend to diminish his happiness; disapproving of them in as far as they tend to augment it.

IV. *A partizan of the principle of asceticism, who.* It is evident that any one who reprobates any the least particle of pleasure, as such, from whatever source derived, is *pro tanto*

a partizan of the principle of asceticism. It is only upon that principle, and not from the principle of utility, that the most abominable pleasure which the vilest of malefactors ever reaped from his crime would be to be reprobated, if it stood alone. The case is, that it never does stand alone; but is necessarily followed by such a quantity of pain (or, what comes to the same thing, such a chance for a certain quantity of pain) that the pleasure in comparison of it, is as nothing: and this is the true and sole, but perfectly sufficient, reason for making it a ground for punishment.

V. *This principle has had in some a philosophical, in others a religious origin.* There are two classes of men of very different complexions, by whom the principle of asceticism appears to have been embraced; the one a set of moralists, the other a set of religionists. Different accordingly have been the motives which appear to have recommended it to the notice of these different parties. Hope, that is the prospect of pleasure, seems to have animated the former: hope, the aliment of philosophic pride: the hope of honour and reputation at the hands of men. Fear, that is the prospect of pain, the latter: fear, the offspring of superstitious fancy: the fear of future punishment at the hands of a splenetic and revengeful Deity. I say in this case fear: for of the invisible future, fear is more powerful than hope. These circumstances characterize the two different parties among the partizans of the principle of asceticism; the parties and their motives different, the principle the same.

VI. *It has been carried farther by the religious party than by the philosophical.* The religious party, however, appear to have carried it farther than the philosophical: they have acted more consistently and less wisely. The philosophical party have scarcely gone farther than to reprobate pleasure: the religious party have frequently gone so far as to make it a matter of merit and of duty to court pain. The philosophical party have hardly gone farther than the making pain a matter of indifference. It is no evil, they have said: they have not said, it is a good. They have not so much as reprobated all pleasure in the lump. They have discarded only what they have called the gross; that is, such as are organical, or of which

the origin is easily traced up to such as are organical: they have even cherished and magnified the refined. Yet this, however, not under the name of pleasure: to cleanse itself from the sordes of its impure original, it was necessary it should change its name: the honourable, the glorious, the reputable, the becoming, the *honestum*, the *decorum*, it was to be called: in short, any thing but pleasure.

VII. *The philosophical branch of it has had most influence among persons of education, the religious among the vulgar.* From these two sources have flowed the doctrines from which the sentiments of the bulk of mankind have all along received a tincture of this principle; some from the philosophical, some from the religious, some from both. Men of education more frequently from the philosophical, as more suited to the elevation of their sentiments: the vulgar more frequently from the superstitious, as more suited to the narrowness of their intellect, undilated by knowledge: and to the abjectness of their condition, continually open to the attacks of fear. The tinctures, however, derived from the two sources, would naturally intermingle, insomuch that a man would not always know by which of them he was most influenced: and they would often serve to corroborate and enliven one another. It was this conformity that made a kind of alliance between parties of a complexion otherwise so dissimilar: and disposed them to unite upon various occasions against the common enemy, the partizan of the principle of utility, whom they joined in branding with the odious name of Epicurean.

VIII. *The principle of asceticism has never been steadily applied by either party to the Business of Government.* The principle of asceticism, however, with whatever warmth it may have been embraced by its partizans as a rule of private conduct, seems not to have been carried to any considerable length, when applied to the business of government. In a few instances it has been carried a little way by the philosophical party: witness the Spartan regimen. Though then, perhaps, it may be considered as having been a measure of security: and an application, though a precipitate and perverse application, of the principle of utility. Scarcely in

any instances, to any considerable length, by the religious: for the various monastic orders, and the societies of the Quakers, Dumplers, Moravians, and other religionists, have been free societies, whose regimen no man has been astricted to without the intervention of his own consent. Whatever merit a man may have thought there would be in making himself miserable, no such notion seems ever to have occurred to any of them, that it may be a merit, much less a duty, to make others miserable: although it should seem, that if a certain quantity of misery were a thing so desirable, it would not matter much whether it were brought by each man upon himself, or by one man upon another. It is true, that from the same source from whence, among the religionists, the attachment to the principle of asceticism took its rise, flowed other doctrines and practices, from which misery in abundance was produced in one man by the instrumentality of another: witness the holy wars, and the persecutions for religion. But the passion for producing misery in these cases proceeded upon some special ground: the exercise of it was confined to persons of particular descriptions: they were tormented, not as men, but as heretics and infidels. To have inflicted the same miseries on their fellow-believers and fellow-sectaries, would have been as blameable in the eyes even of these religionists, as in those of a partizan of the principle of utility. For a man to give himself a certain number of stripes was indeed meritorious: but to give the same number of stripes to another man, not consenting, would have been a sin. We read of saints, who for the good of their souls, and the mortification of their bodies, have voluntarily yielded themselves a prey to vermin: but though many persons of this class have wielded the reins of empire, we read of none who have set themselves to work, and made laws on purpose, with a view of stocking the body politic with the breed of highwaymen, housebreakers, or incendiaries. If at any time they have suffered the nation to be preyed upon by swarms of idle pensioners, or useless placemen, it has rather been from negligence and imbecility, than from any settled plan for oppressing and plundering of the people. If at any time

they have sapped the sources of national wealth, by cramping commerce, and driving the inhabitants into emigration, it has been with other views, and in pursuit of other ends. If they have declaimed against the pursuit of pleasure, and the use of wealth, they have commonly stopped at declamation: they have not, like Lycurgus, made express ordinances for the purpose of banishing the precious metals. If they have established idleness by a law, it has been not because idleness, the mother of vice and misery, is itself a virtue, but because idleness (say they) is the road to holiness. If under the notion of fasting, they have joined in the plan of confining their subjects to a diet, thought by some to be of the most nourishing and prolific nature, it has been not for the sake of making them tributaries to the nations by whom that diet was to be supplied, but for the sake of manifesting their own power, and exercising the obedience of the people. If they have established, or suffered to be established, punishments for the breach of celibacy, they have done no more than comply with the petitions of those deluded rigorists, who, dupes to the ambitious and deep-laid policy of their rulers, first laid themselves under that idle obligation by a vow.

IX. *The principle of asceticism, in its origin, was but that of utility misapplied.* The principle of asceticism seems originally to have been the reverie of certain hasty speculators, who having perceived, or fancied, that certain pleasures, when reaped in certain circumstances, have, at the long run, been attended with pains more than equivalent to them, took occasion to quarrel with every thing that offered itself under the name of pleasure. Having then got thus far, and having forgot the point which they set out from, they pushed on, and went so much further as to think it meritorious to fall in love with pain. Even this, we see, is at bottom but the principle of utility misapplied.

X. *It can never be consistently pursued.* The principle of utility is capable of being consistently pursued; and it is but tautology to say, that the more consistently it is pursued, the better it must ever be for humankind. The principle of asceticism never was, nor ever can be, consistently pursued by

any living creature. Let but one tenth part of the inhabitants of this earth pursue it consistently, and in a day's time they will have turned it into a hell.

XI. *The principle of sympathy and antipathy, what.* Among principles adverse [6] to that of utility, that which at this day seems to have most influence in matters of government, is what may be called the principle of sympathy and antipathy. By the principle of sympathy and antipathy, I mean that principle which approves or disapproves of certain actions, not on account of their tending to augment the happiness, nor yet on account of their tending to diminish the happiness of the party whose interest is in question, but merely because a man finds himself disposed to approve or disapprove of them: holding up that approbation or disapprobation as a sufficient reason for itself, and disclaiming the necessity of looking out for any extrinsic ground. Thus far in the general department of morals: and in the particular department of politics, measuring out the quantum (as well as determining the ground) of punishment, by the degree of the disapprobation.

XII. *This is rather the negation of all principle, than any thing positive.* It is manifest, that this is rather a principle in name than in reality: it is not a positive principle of itself, so much as a term employed to signify the negation of all principle. What one expects to find in a principle is something that points out some external consideration, as a means of warranting and guiding the internal sentiments of approbation and disapprobation: this expectation is but ill fulfilled by a proposition, which does neither more nor less than hold up each of those sentiments as a ground and standard for itself.

XIII. *Sentiments of a partizan of the principle of antipathy.* In looking over the catalogue of human actions (says a partizan of this principle) in order to determine which of them are to be marked with the seal of disapprobation, you need but to take counsel of your own feelings: whatever you find in yourself a propensity to condemn, is wrong for that very reason. For the same reason it is also meet for punishment: in what proportion it is adverse to utility, or whether it be adverse to utility at all, is a matter that makes no differ-

ence. In that same *proportion* also is it meet for punishment: if you hate much, punish much: if you hate little, punish little: punish as you hate. If you hate not at all, punish not at all: the fine feelings of the soul are not to be overborne and tyrannized by the harsh and rugged dictates of political utility.

XIV. *The systems that have been formed concerning the standard of right and wrong, are all reducible to this principle.* The various systems that have been formed concerning the standard of right and wrong, may all be reduced to the principle of sympathy and antipathy. One account may serve for all of them. They consist all of them in so many contrivances for avoiding the obligation of appealing to any external standard, and for prevailing upon the reader to accept of the author's sentiment or opinion as a reason for itself. The phrases different, but the principle the same.[7]

XV. *This principle will frequently coincide with that of utility.* It is manifest, that the dictates of this principle will frequently coincide with those of utility, though perhaps without intending any such thing. Probably more frequently than not: and hence it is that the business of penal justice is carried on upon that tolerable sort of footing upon which we see it carried on in common at this day. For what more natural or more general ground of hatred to a practice can there be, than the mischievousness of such practice? What all men are exposed to suffer by, all men will be disposed to hate. It is far yet, however, from being a constant ground: for when a man suffers, it is not always that he knows what it is he suffers by. A man may suffer grievously, for instance, by a new tax, without being able to trace up the cause of his sufferings to the injustice of some neighbour, who has eluded the payment of an old one.

XVI. *This principle is most apt to err on the side of severity.* The principle of sympathy and antipathy is most apt to err on the side of severity. It is for applying punishment in many cases which deserve none: in many cases which deserve some, it is for applying more than they deserve. There is no incident imaginable, be it ever so trivial, and so remote from mischief, from which this principle may not extract a ground

of punishment. Any difference in taste: any difference in opinion: upon one subject as well as upon another. No disagreement so trifling which perseverance and altercation will not render serious. Each becomes in the other's eyes an enemy, and, if laws permit, a criminal.[8] This is one of the circumstances by which the human race is distinguished (not much indeed to its advantage) from the brute creation.

XVII. *But errs, in some instances, on the side of lenity.* It is not, however, by any means unexampled for this principle to err on the side of lenity. A near and perceptible mischief moves antipathy. A remote and imperceptible mischief, though not less real, has no effect. Instances in proof of this will occur in numbers in the course of the work.[9] It would be breaking in upon the order of it to give them here.

XVIII. *The theological principle, what—not a separate principle.* It may be wondered, perhaps, that in all this while no mention has been made of the *theological* principle; meaning that principle which professes to recur for the standard of right and wrong to the will of God. But the case is, this is not in fact a distinct principle. It is never any thing more or less than one or other of the three before-mentioned principles presenting itself under another shape. The *will* of God here meant cannot be his revealed will, as contained in the sacred writings: for that is a system which nobody ever thinks of recurring to at this time of day, for the details of political administration: and even before it can be applied to the details of private conduct, it is universally allowed, by the most eminent divines of all persuasions, to stand in need of pretty ample interpretations; else to what use are the works of those divines? And for the guidance of these interpretations, it is also allowed, that some other standard must be assumed. The will then which is meant on this occasion, is that which may be called the *presumptive* will: that is to say, that which is presumed to be his will on account of the conformity of its dictates to those of some other principle. What then may be this other principle? it must be one or other of the three mentioned above: for there cannot, as we have seen, be any more. It is plain, therefore, that, setting revelation out of the question, no light can ever be thrown upon the standard of right

and wrong, by any thing that can be said upon the question, what is God's will. We may be perfectly sure, indeed, that whatever is right is conformable to the will of God: but so far is that from answering the purpose of showing us what is right, that it is necessary to know first whether a thing is right, in order to know from thence whether it be conformable to the will of God.[10]

XIX. *Antipathy, let the actions it dictates be ever so right, is never of itself a right ground of action.* There are two things which are very apt to be confounded, but which it imports us carefully to distinguish:—the motive or cause, which, by operating on the mind of an individual, is productive of any act: and the ground or reason which warrants a legislator, or other by-stander, in regarding that act with an eye of approbation. When the act happens, in the particular instance in question, to be productive of effects which we approve of, much more if we happen to observe that the same motive may frequently be productive, in other instances, of the like effects, we are apt to transfer our approbation to the motive itself, and to assume, as the just ground for the approbation we bestow on the act, the circumstance of its originating from that motive. It is in this way that the sentiment of antipathy has often been considered as a just ground of action. Antipathy, for instance, in such or such a case, is the cause of an action which is attended with good effects: but this does not make it a right ground of action in that case, any more than in any other. Still farther. Not only the effects are good, but the agent sees beforehand that they will be so. This may make the action indeed a perfectly right action: but it does not make antipathy a right ground of action. For the same sentiment of antipathy, if implicitly deferred to, may be, and very frequently is, productive of the very worst effects. Antipathy, therefore, can never be a right ground of action. No more, therefore, can resentment, which, as will be seen more particularly hereafter, is but a modification of antipathy. The only right ground of action, that can possibly subsist, is, after all, the consideration of utility, which, if it is a right principle of action, and of approbation, in any one case, is so in every other. Other principles in abundance, that is, other

motives, may be the reasons why such and such an act *has* been done: that is, the reasons or causes of its being done: but it is this alone that can be the reason why it might or ought to have been done. Antipathy or resentment requires always to be regulated, to prevent its doing mischief: to be regulated by what? always by the principle of utility. The principle of utility neither requires nor admits of any other regulator than itself.

CHAPTER III.

OF THE FOUR SANCTIONS OR SOURCES OF PAIN AND PLEASURE.

I. *Connexion of this chapter with preceding.* It has been shown that the happiness of the individuals, of whom a community is composed, that is their pleasures and their security, is the end and the sole end which the legislator ought to have in view: the sole standard, in conformity to which each individual ought, as far as depends upon the legislator, to be *made* to fashion his behaviour. But whether it be this or any thing else that is to be *done*, there is nothing by which a man can ultimately be *made* to do it, but either pain or pleasure. Having taken a general view of these two grand objects (*viz.* pleasure, and what comes to the same thing, immunity from pain) in the character of *final* causes; it will be necessary to take a view of pleasure and pain itself, in the character of *efficient* causes or means.

II. *Four sanctions or sources of pleasure and pain.* There are four distinguishable sources from which pleasure and pain are in use to flow: considered separately, they may be termed the *physical*, the *political*, the *moral*, and the *religious*: and inasmuch as the pleasures and pains belonging to each of them are capable of giving a binding force to any law or rule of conduct, they may all of them be termed *sanctions*.[11]

III. *The physical sanction.* If it be in the present life, and from the ordinary course of nature, not purposely modified by the interposition of the will of any human being, nor by any extraordinary interposition of any superior invisible being, that the pleasure or the pain takes place or is expected, it may be said to issue from or to belong to the *physical sanction*.

IV. *The political.* If at the hands of a *particular* person or set of persons in the community, who under names correspondent to that of *judge*, are chosen for the particular purpose of dispensing it, according to the will of the sovereign or supreme ruling power in the state, it may be said to issue from the *political sanction.*

V. *The moral or popular.* If at the hands of such *chance* persons in the community, as the party in question may happen in the course of his life to have concerns with, according to each man's spontaneous disposition, and not according to any settled or concerted rule, it may be said to issue from the *moral* or *popular sanction.*[12]

VI. *The religious.* If from the immediate hand of a superior invisible being, either in the present life, or in a future, it may be said to issue from the *religious sanction.*

VII. *The pleasures and pains which belong to the religious sanction, may regard either the present life or a future.* Pleasures or pains which may be expected to issue from the *physical, political,* or *moral* sanctions, must all of them be expected to be experienced, if ever, in the *present* life: those which may be expected to issue from the *religious* sanction, may be expected to be experienced either in the *present* life or in a *future.*

VIII. *Those which regard the present life, from whichsoever source they flow, differ only in the circumstances of their production.* Those which can be experienced in the present life, can of course be no others than such as human nature in the course of the present life is susceptible of: and from each of these sources may flow all the pleasures or pains of which, in the course of the present life, human nature is susceptible. With regard to these then (with which alone we have in this place any concern) those of them which belong to any one of those sanctions, differ not ultimately in kind from those which belong to any one of the other three: the only difference there is among them lies in the circumstances that accompany their production. A suffering which befalls a man in the natural and spontaneous course of things, shall be styled, for instance, a *calamity;* in which case, if it be supposed to befall him through any imprudence of his, it may be

styled a punishment issuing from the physical sanction. Now this same suffering, if inflicted by the law, will be what is commonly called a *punishment*; if incurred for want of any friendly assistance, which the misconduct, or supposed misconduct, of the sufferer has occasioned to be withholden, a punishment issuing from the *moral* sanction; if through the immediate interposition of a particular providence, a punishment issuing from the religious sanction.

IX. *Example.* A man's goods, or his person, are consumed by fire. If this happened to him by what is called an accident, it was a calamity: if by reason of his own imprudence (for instance, from his neglecting to put his candle out) it may be styled a punishment of the physical sanction: if it happened to him by the sentence of the political magistrate, a punishment belonging to the political sanction; that is, what is commonly called a punishment: if for want of any assistance which his *neighbour* withheld from him out of some dislike to his *moral* character, a punishment of the *moral* sanction: if by an immediate act of *God's* displeasure, manifested on account of some *sin* committed by him, or through any distraction of mind, occasioned by the dread of such displeasure, a punishment of the *religious* sanction.[13]

X. *Those which regard a future life are not specifically known.* As to such of the pleasures and pains belonging to the religious sanction, as regard a future life, of what kind these may be we cannot know. These lie not open to our observation. During the present life they are matter only of expectation: and, whether that expectation be derived from natural or revealed religion, the particular kind of pleasure or pain, if it be different from all those which lie open to our observation, is what we can have no idea of. The best ideas we can obtain of such pains and pleasures are altogether unliquidated in point of quality. In what other respects our ideas of them *may* be liquidated will be considered in another place.[14]

XI. *The physical sanction included in each of the other three.* Of these four sanctions the physical is altogether, we may observe, the ground-work of the political and the moral: so is it also of the religious, in as far as the latter bears relation to the present life. It is included in each of those other

three. This may operate in any case, (that is, any of the pains or pleasures belonging to it may operate) independently of *them*: none of *them* can operate but by means of this. In a word, the powers of nature may operate of themselves; but neither the magistrate, nor men at large, *can* operate, nor is God in the case in question *supposed* to operate, but through the powers of nature.

XII. *Use of this chapter*. For these four objects, which in their nature have so much in common, it seemed of use to find a common name. It seemed of use, in the first place, for the convenience of giving a name to certain pleasures and pains, for which a name equally characteristic could hardly otherwise have been found: in the second place, for the sake of holding up the efficacy of certain moral forces, the influence of which is apt not to be sufficiently attended to. Does the political sanction exert an influence over the conduct of mankind? The moral, the religious sanctions do so too. In every inch of his career are the operations of the political magistrate liable to be aided or impeded by these two foreign powers: who, one or other of them, or both, are sure to be either his rivals or his allies. Does it happen to him to leave them out in his calculations? he will be sure almost to find himself mistaken in the result. Of all this we shall find abundant proofs in the sequel of this work. It behoves him, therefore, to have them continually before his eyes; and that under such a name as exhibits the relation they bear to his own purposes and designs.

CHAPTER IV.

VALUE OF A LOT OF PLEASURE OR PAIN, HOW TO BE MEASURED.

I. *Use of this chapter.* Pleasures then, and the avoidance of pains, are the *ends* which the legislator has in view: it behoves him therefore to understand their *value*. Pleasures and pains are the *instruments* he has to work with: it behoves him therefore to understand their force, which is again, in other words, their value.

II. *Circumstances to be taken into the account in estimating the value of a pleasure or pain considered with reference to a single person, and by itself.* To a person considered *by himself*, the value of a pleasure or pain considered *by itself*, will be greater or less, according to the four following circumstances: [15]

1. Its *intensity*.
2. Its *duration*.
3. Its *certainty* or *uncertainty*.
4. Its *propinquity* or *remoteness*.

III. *—considered as connected with other pleasures or pains.* These are the circumstances which are to be considered in estimating a pleasure or a pain considered each of them by itself. But when the value of any pleasure or pain is considered for the purpose of estimating the tendency of any *act* by which it is produced, there are two other circumstances to be taken into the account; these are,

5. Its *fecundity*, or the chance it has of being followed by sensations of the *same* kind: that is, pleasures, if it be a pleasure: pains, if it be a pain.

6. Its *purity*, or the chance it has of *not* being followed by sensations of the *opposite* kind: that is, pains, if it be a pleasure: pleasures, if it be a pain.

These two last, however, are in strictness scarcely to be deemed properties of the pleasure or the pain itself; they are not, therefore, in strictness to be taken into the account of the value of that pleasure or that pain. They are in strictness to be deemed properties only of the act, or other event, by which such pleasure or pain has been produced; and accordingly are only to be taken into the account of the tendency of such act or such event.

IV. —*considered with reference to a number of persons.* To a *number* of persons, with reference to each of whom the value of a pleasure or a pain is considered, it will be greater or less, according to seven circumstances: to wit, the six preceding ones; *viz.*

1. Its *intensity.*
2. Its *duration.*
3. Its *certainty* or *uncertainty.*
4. Its *propinquity* or *remoteness.*
5. Its *fecundity.*
6. Its *purity.*

And one other; to wit:

7. Its *extent;* that is, the number of persons to whom it *extends;* or (in other words) who are affected by it.

V. *Process for estimating the tendency of any act or event.* To take an exact account then of the general tendency of any act, by which the interests of a community are affected, proceed as follows. Begin with any one person of those whose interests seem most immediately to be affected by it: and take an account,

1. Of the value of each distinguishable *pleasure* which appears to be produced by it in the *first* instance.
2. Of the value of each *pain* which appears to be produced by it in the *first* instance.
3. Of the value of each pleasure which appears to be produced by it *after* the first. This constitutes the *fecundity* of the first *pleasure* and the *impurity* of the first *pain.*
4. Of the value of each *pain* which appears to be produced

by it after the first. This constitutes the *fecundity* of the first *pain*, and the *impurity* of the first pleasure.

5. Sum up all the values of all the *pleasures* on the one side, and those of all the pains on the other. The balance, if it be on the side of pleasure, will give the *good* tendency of the act upon the whole, with respect to the interests of that *individual* person; if on the side of pain, the *bad* tendency of it upon the whole.

6. Take an account of the *number* of persons whose interests appear to be concerned; and repeat the above process with respect to each. *Sum up* the numbers expressive of the degrees of *good* tendency, which the act has, with respect to each individual, in regard to whom the tendency of it is *good* upon the whole: do this again with respect to each individual, in regard to whom the tendency of it is *good* upon the whole: do this again with respect to each individual, in regard to whom the tendency of it is *bad* upon the whole. Take the *balance*; which, if on the side of *pleasure*, will give the general *good tendency* of the act, with respect to the total number or community of individuals concerned; if on the side of pain, the general *evil tendency*, with respect to the same community.

VI. *Use of the foregoing process.* It is not to be expected that this process should be strictly pursued previously to every moral judgment, or to every legislative or judicial operation. It may, however, be always kept in view: and as near as the process actually pursued on these occasions approaches to it, so near will such process approach to the character of an exact one.

VII. *The same process applicable to good and evil, profit and mischief, and all other modifications of pleasure and pain.* The same process is alike applicable to pleasure and pain, in whatever shape they appear: and by whatever denomination they are distinguished: to pleasure, whether it be called *good* (which is properly the cause or instrument of pleasure) or *profit* (which is distant pleasure, or the cause or instrument of distant pleasure,) or *convenience*, or *advantage*, *benefit*, *emolument*, *happiness*, and so forth: to pain, whether it be called *evil*, (which corresponds to *good*) or *mischief*, or *in-*

convenience, or *disadvantage*, or *loss*, or *unhappiness*, and so forth.

VIII. *Conformity of men's practice to this theory.* Nor is this a novel and unwarranted, any more than it is a useless theory. In all this there is nothing but what the practice of mankind, wheresoever they have a clear view of their own interest, is perfectly conformable to. An article of property, an estate in land, for instance, is valuable, on what account? On account of the pleasures of all kinds which it enables a man to produce, and what comes to the same thing the pains of all kinds which it enables him to avert. But the value of such an article of property is universally understood to rise or fall according to the length or shortness of the time which a man has in it: the certainty or uncertainty of its coming into possession: and the nearness or remoteness of the time at which, if at all, it is to come into possession. As to the *intensity* of the pleasures which a man may derive from it, this is never thought of, because it depends upon the use which each particular person may come to make of it; which cannot be estimated till the particular pleasures he may come to derive from it, or the particular pains he may come to exclude by means of it, are brought to view. For the same reason, neither does he think of the *fecundity* or *purity* of those pleasures.

Thus much for pleasure and pain, happiness and unhappiness, in *general*. We come now to consider the several particular kinds of pain and pleasure.

CHAPTER V.

PLEASURES AND PAINS, THEIR KINDS.

I. *Pleasures and pains are either* 1. *Simple: or,* 2. *Complex.* Having represented what belongs to all sorts of pleasures and pains alike, we come now to exhibit, each by itself, the several sorts of pains and pleasures. Pains and pleasures may be called by one general word, interesting perceptions. Interesting perceptions are either simple or complex. The simple ones are those which cannot any one of them be resolved into more: complex are those which are resolvable into divers simple ones. A complex interesting perception may accordingly be composed either, 1. Of pleasures alone: 2. Of pains alone: or, 3. Of a pleasure or pleasures, and a pain or pains together. What determines a lot of pleasure, for example, to be regarded as one complex pleasure, rather than as divers simple ones, is the nature of the exciting cause. Whatever pleasures are excited all at once by the action of the same cause, are apt to be looked upon as constituting all together but one pleasure.

II. *The simple pleasures enumerated.* The several simple pleasures of which human nature is susceptible, seem to be as follows: 1. The pleasures of sense. 2. The pleasures of wealth. 3. The pleasures of skill. 4. The pleasures of amity. 5. The pleasures of a good name. 6. The pleasures of power. 7. The pleasures of piety. 8. The pleasures of benevolence. 9. The pleasures of malevolence. 10. The pleasures of memory. 11. The pleasures of imagination. 12. The pleasures of expectation. 13. The pleasures dependent on association. 14. The pleasures of relief.

III. *The simple pains enumerated.* The several simple pains seem to be as follows: 1. The pains of privation. 2. The pains of the senses. 3. The pains of awkwardness. 4. The pains of enmity. 5. The pains of an ill name. 6. The pains of piety. 7. The pains of benevolence. 8. The pains of malevolence. 9. The pains of the memory. 10. The pains of the imagination. 11. The pains of expectation. 12. The pains dependent on association.[16]

IV. 1. *Pleasures of sense enumerated.* The pleasures of sense seem to be as follows: 1. The pleasures of the taste or palate; including whatever pleasures are experienced in satisfying the appetites of hunger and thirst. 2. The pleasure of intoxication. 3. The pleasures of the organ of smelling. 4. The pleasures of the touch. 5. The simple pleasures of the ear; independent of association. 6. The simple pleasures of the eye; independent of association. 7. The pleasure of the sexual sense. 8. The pleasure of health: or, the internal pleasureable feeling or flow of spirits (as it is called,) which accompanies a state of full health and vigour; especially at times of moderate bodily exertion. 9. The pleasures of novelty: or, the pleasures derived from the gratification of the appetite of curiosity, by the application of new objects to any of the senses.[17]

V. 2. *Pleasures of wealth, which are either of acquisition or of possession.* By the pleasures of wealth may be meant those pleasures which a man is apt to derive from the consciousness of possessing any article or articles which stand in the list of instruments of enjoyment or security, and more particularly at the time of his first acquiring them; at which time the pleasure may be styled a pleasure of gain or a pleasure of acquisition: at other times a pleasure of possession.

3. *Pleasures of skill.* The pleasures of skill, as exercised upon particular objects, are those which accompany the application of such particular instruments of enjoyment to their uses, as cannot be so applied without a greater or less share of difficulty or exertion.[18]

VI. 4. *Pleasures of amity.* The pleasures of amity, or self-recommendation, are the pleasures that may accompany the persuasion of a man's being in the acquisition or the posses-

sion of the good-will of such or such assignable person or persons in particular: or, as the phrase is, of being upon good terms with him or them: and as a fruit of it, of his being in a way to have the benefit of their spontaneous and gratuitous services.

VII. 5. *Pleasures of a good name.* The pleasures of a good name are the pleasures that accompany the persuasion of a man's being in the acquisition or the possession of the good-will of the world about him; that is, of such members of society as he is likely to have concerns with; and as a means of it, either their love or their esteem, or both: and as a fruit of it, of his being in the way to have the benefit of their spontaneous and gratuitous services. These may likewise be called the pleasures of good repute, the pleasures of honour, or the pleasures of the moral sanction.[19]

VIII. 6. *Pleasures of power.* The pleasures of power are the pleasures that accompany the persuasion of a man's being in a condition to dispose people, by means of their hopes and fears, to give him the benefit of their services: that is, by the hope of some service, or by the fear of some disservice, that he may be in the way to render them.

IX. 7. *Pleasures of piety.* The pleasures of piety are the pleasures that accompany the belief of a man's being in the acquisition or in possession of the good-will or favour of the Supreme Being: and as a fruit of it, of his being in a way of enjoying pleasures to be received by God's special appointment, either in this life, or in a life to come. These may also be called the pleasures of religion, the pleasures of a religious disposition, or the pleasures of the religious sanction.[20]

X. 8. *Pleasures of benevolence or good-will.* The pleasures of benevolence are the pleasures resulting from the view of any pleasures supposed to be possessed by the beings who may be the objects of benevolence; to wit, the sensitive beings we are acquainted with; under which are commonly included, 1. The Supreme Being. 2. Human beings. 3. Other animals. These may also be called the pleasures of good-will, the pleasures of sympathy, or the pleasures of the benevolent or social affections.

XI. 9. *Pleasures of malevolence or ill-will.* The pleasures of

malevolence are the pleasures resulting from the view of any pain supposed to be suffered by the beings who may become the objects of malevolence; to wit, 1. Human beings. 2. Other animals. These may also be styled the pleasures of ill-will, the pleasures of the irascible appetite, the pleasures of antipathy, or the pleasures of the malevolent or dissocial affections.

XII. 10. *Pleasures of the memory.* The pleasures of the memory are the pleasures which, after having enjoyed such and such pleasures, or even in some case after having suffered such and such pains, a man will now and then experience, at recollecting them exactly in the order and in the circumstances in which they were actually enjoyed or suffered. These derivative pleasures may of course be distinguished into as many species as there are of original perceptions, from whence they may be copied. They may also be styled pleasures of simple recollection.

XIII. 11. *Pleasures of the imagination.* The pleasures of the imagination are the pleasures which may be derived from the contemplation of any such pleasures as may happen to be suggested by the memory, but in a different order, and accompanied by different groups of circumstances. These may accordingly be referred to any one of the three cardinal points of time, present, past, or future. It is evident they may admit of as many distinctions as those of the former class.

XIV. 12. *Pleasures of expectation.* The pleasures of expectation are the pleasures that result from the contemplation of any sort of pleasure, referred to time *future*, and accompanied with the sentiment of *belief*. These also may admit of the same distinctions.[21]

XV. 13. *Pleasures depending on association.* The pleasures of association are the pleasures which certain objects or incidents may happen to afford, not of themselves, but merely in virtue of some association they have contracted in the mind with certain objects or incidents which are in themselves pleasurable. Such is the case, for instance, with the pleasure of skill, when afforded by such a set of incidents as compose a game of chess. This derives its pleasurable quality from its association partly with the pleasures of skill, as exer-

cised in the production of incidents pleasurable of themselves: partly from its association with the pleasures of power. Such is the case also with the pleasure of good luck, when afforded by such incidents as compose the game of hazard, or any other game of chance, when played at for nothing. This derives its pleasurable quality from its association with one of the pleasures of wealth; to wit, with the pleasure of acquiring it.

XVI. 14. *Pleasures of relief.* Farther on we shall see pains grounded upon pleasures; in like manner may we now see pleasures grounded upon pains. To the catalogue of pleasures may accordingly be added the pleasures of *relief:* or, the pleasures which a man experiences when, after he has been enduring a pain of any kind for a certain time, it comes to cease, or to abate. These may of course be distinguished into as many species as there are of pains: and may give rise to so many pleasures of memory, of imagination, and of expectation.

XVII. 1. *Pains of privation.* Pains of privation are the pains that may result from the thought of not possessing in the time present any of the several kinds of pleasures. Pains of privation may accordingly be resolved into as many kinds as there are of pleasures to which they may correspond, and from the absence whereof they may be derived.

XVIII. *These include,* 1. *Pains of desire.* There are three sorts of pains which are only so many modifications of the several pains of privation. When the enjoyment of any particular pleasure happens to be particularly desired, but without any expectation approaching to assurance, the pain of privation which thereupon results takes a particular name, and is called the pain of *desire,* or of unsatisfied desire.

XIX. 2. *Pains of disappointment.* Where the enjoyment happens to have been looked for with a degree of expectation approaching to assurance, and that expectation is made suddenly to cease, it is called a pain of disappointment.

XX. 3. *Pains of regret.* A pain of privation takes the name of a pain of regret in two cases: 1. Where it is grounded on the memory of a pleasure, which having been once enjoyed,

appears not likely to be enjoyed again: 2. Where it is grounded on the idea of a pleasure, which was never actually enjoyed, nor perhaps so much as expected, but which might have been enjoyed (it is supposed,) had such or such a contingency happened, which, in fact, did not happen.

XXI. 2. *Pains of the senses.* The several pains of the senses seem to be as follows: 1. The pains of hunger and thirst: or the disagreeable sensations produced by the want of suitable substances which need at times to be applied to the alimentary canal. 2. The pains of the taste: or the disagreeable sensations produced by the application of various substances to the palate, and other superior parts of the same canal. 3. The pains of the organ of smell: or the disagreeable sensations produced by the effluvia of various substances when applied to that organ. 4. The pains of the touch: or the disagreeable sensations produced by the application of various substances to the skin. 5. The simple pains of the hearing: or the disagreeable sensations excited in the organ of that sense by various kinds of sounds: independently (as before,) of association. 6. The simple pains of the sight: or the disagreeable sensations if any such there be, that may be excited in the organ of that sense by visible images, independent of the principle of association. 7.[22] The pains resulting from excessive heat or cold, unless these be referable to the touch. 8. The pains of disease: or the acute and uneasy sensations resulting from the several diseases and indispositions to which human nature is liable. 9. The pain of exertion, whether bodily or mental: or the uneasy sensation which is apt to accompany any intense effort, whether of mind or body.

XXII. 3.[23] *Pains of awkwardness.* The pains of awkwardness are the pains which sometimes result from the unsuccessful endeavour to apply any particular instruments of enjoyment or security to their uses, or from the difficulty a man experiences in applying them.[24]

XXIII. 4. *Pains of enmity.* The pains of enmity are the pains that may accompany the persuasion of a man's being obnoxious to the ill-will of such or such an assignable person or persons in particular: or, as the phrase is, of being upon ill terms with him or them: and, in consequence, of being

obnoxious to certain pains of some sort or other, of which he may be the cause.

XXIV. 5. *Pains of an ill-name.* The pains of an ill-name, are the pains that accompany the persuasion of a man's being obnoxious, or in a way to be obnoxious to the ill-will of the world about him. These may likewise be called the pains of ill-repute, the pains of dishonour, or the pains of the moral sanction.[25]

XXV. 6.[26] *Pains of piety.* The pains of piety are the pains that accompany the belief of a man's being obnoxious to the displeasure of the Supreme Being: and in consequence to certain pains to be inflicted by his especial appointment, either in this life or in a life to come. These may also be called the pains of religion; the pains of a religious disposition; or the pains of the religious sanction. When the belief is looked upon as well-grounded, these pains are commonly called religious terrors; when looked upon as ill-grounded, superstitious terrors.[27]

XXVI. 7. *Pains of benevolence.* The pains of benevolence are the pains resulting from the view of any pains supposed to be endured by other beings. These may also be called the pains of good-will, of sympathy, or the pains of the benevolent or social affections.

XXVII. 8. *Pains of malevolence.* The pains of malevolence are the pains resulting from the view of any pleasures supposed to be enjoyed by any beings who happen to be the objects of a man's displeasure. These may also be styled the pains of ill-will, of antipathy, or the pains of the malevolent or dissocial affections.

XXVIII. 9. *Pains of the memory.* The pains of the memory may be grounded on every one of the above kinds, as well of pains of privation as of positive pains. These correspond exactly to the pleasures of the memory.

XXIX. 10. *Pains of the imagination.* The pains of the imagination may also be grounded on any one of the above kinds, as well of pains of privation as of positive pains: in other respects they correspond exactly to the pleasures of the imagination.

XXX. 11. *Pains of expectation.* The pains of expectation

may be grounded on each one of the above kinds, as well of pains of privation as of positive pains. These may be also termed pains of apprehension.[28]

XXXI. 12. *Pains of association*. The pains of association correspond exactly to the pleasures of association.

XXXII. *Pleasures and pains are either self-regarding or extra-regarding*. Of the above list there are certain pleasures and pains which suppose the existence of some pleasure or pain of some other person, to which the pleasure or pain of the person in question has regard: such pleasures and pains may be termed *extra-regarding*. Others do not suppose any such thing: these may be termed *self-regarding*.[29] The only pleasures and pains of the extra-regarding class are those of benevolence and those of malevolence: all the rest are self-regarding.[30]

XXXIII. *In what ways the law is concerned with the above pains and pleasures*. Of all these several sorts of pleasures and pains, there is scarce any one which is not liable, on more accounts than one, to come under the consideration of the law. Is an offence committed? It is the tendency which it has to destroy, in such or such persons, some of these pleasures, or to produce some of these pains, that constitutes the mischief of it, and the ground for punishing it. It is the prospect of some of these pleasures, or of security from some of these pains, that constitutes the motive or temptation, it is the attainment of them that constitutes the profit of the offence. Is the offender to be punished? It can be only by the production of one or more of these pains, that the punishment can be inflicted.[31]

CHAPTER VI.

OF CIRCUMSTANCES INFLUENCING SENSIBILITY.

I. *Pain and pleasure not uniformly proportioned to their causes.* Pain and pleasure are produced in men's minds by the action of certain causes. But the quantity of pleasure and pain runs not uniformly in proportion to the cause; in other words, to the quantity of force exerted by such cause. The truth of this observation rests not upon any metaphysical nicety in the import given to the terms *cause*, *quantity*, and *force:* it will be equally true in whatsoever manner such force be measured.

II. *Degree or* quantum *of sensibility, what.* The disposition which any one has to feel such or such a quantity of pleasure or pain, upon the application of a cause of given force, is what we term the degree or *quantum* of his sensibility. This may be either *general*, referring to the sum of the causes that act upon him during a given period: or *particular*, referring to the action of any one particular cause, or sort of cause.

III. *Bias* or *quality of sensibility, what.* But in the same mind such and such causes of pain or pleasure will produce more pain or pleasure than such or such other causes of pain or pleasure: and this proportion will in different minds be different. The disposition which any one has to have the proportion in which he is affected by two such causes, different from that in which another man is affected by the same two causes, may be termed the quality or *bias* of his sensibility. One man, for instance, may be most affected by the pleasures of the taste; another by those of the ear. So

also, if there be a difference in the nature or proportion of two pains or pleasures which they respectively experience from the same cause; a case not so frequent as the former. From the same injury, for instance, one man may feel the same quantity of grief and resentment together as another man: but one of them shall feel a greater share of grief than of resentment: the other, a greater share of resentment than of grief.

IV. *Exciting causes pleasurable and dolorific.* Any incident which serves as a cause, either of pleasure or of pain, may be termed an *exciting* cause: if of pleasure, a pleasurable cause: if of pain, a painful, afflictive, or dolorific cause.[82]

V. *Circumstances influencing sensibility what.* Now the quantity of pleasure, or of pain, which a man is liable to experience upon the application of an exciting cause, since they will not depend altogether upon that cause, will depend in some measure upon some other circumstance or circumstances: these circumstances, whatsoever they be, may be termed *circumstances influencing sensibility.*[83]

VI. *Circumstances influencing sensibility enumerated.* These circumstances will apply differently to different exciting causes; insomuch that to a certain exciting cause, a certain circumstance shall not apply at all, which shall apply with great force to another exciting cause. But without entering for the present into these distinctions, it may be of use to sum up all the circumstances which can be found to influence the effect of *any* exciting cause. These, as on a former occasion, it may be as well first to sum up together in the concisest manner possible, and afterwards to allot a few words to the separate explanation of each article. They seem to be as follows: 1. Health. 2. Strength. 3. Hardiness. 4. Bodily imperfection. 5. Quantity and quality of knowledge. 6. Strength of intellectual powers. 7. Firmness of mind. 8. Steadiness of mind. 9. Bent of inclination. 10. Moral sensibility. 11. Moral biases. 12. Religious sensibility. 13. Religious biases. 14. Sympathetic sensibility. 15. Sympathetic biases. 16. Antipathetic sensibility. 17. Antipathetic biases. 18. Insanity. 19. Habitual occupation. 20. Pecuniary circumstances. 21. Connexions in the way of sympathy. 22. Connexions in the way of antipathy. 23. Radical frame of body. 24. Radical

frame of mind. 25. Sex. 26. Age. 27. Rank. 28. Education. 29. Climate. 30. Lineage. 31. Government. 32. Religious profession.[34]

VII. 1. *Health.* Health is the absence of disease, and consequently of all those kinds of pain which are among the symptoms of disease. A man may be said to be in a state of health when he is not conscious of any uneasy sensations, the primary seat of which can be perceived to be anywhere in his body.[35] In point of general sensibility, a man who is under the pressure of any bodily indisposition, or, as the phrase is, is in an ill state of health, is less sensible to the influence of any pleasurable cause, and more so to that of any afflictive one, than if he were *well.*

VIII. 2. *Strength.* The circumstance of strength, though in point of causality closely connected with that of health, is perfectly distinguishable from it. The same man will indeed generally be stronger in a good state of health than in a bad one. But one man, even in a bad state of health, may be stronger than another even in a good one. Weakness is a common concomitant of disease: but in consequence of his radical frame of body, a man may be weak all his life long, without experiencing any disease. Health, as we have observed, is principally a negative circumstance: strength a positive one. The degree of a man's strength can be measured with tolerable accuracy.[36]

IX. 3. *Hardiness.* Hardiness is a circumstance which, though closely connected with that of strength, is distinguishable from it. Hardiness is the absence of irritability. Irritability respects either pain, resulting from the action of mechanical causes; or disease, resulting from the action of causes purely physiological. Irritability, in the former sense, is the disposition to undergo a greater or less degree of pain upon the application of a mechanical cause; such as are most of those applications by which simple afflictive punishments are inflicted, as whipping, beating, and the like. In the latter sense, it is the disposition to contract disease with greater or less facility, upon the application of any instrument acting on the body by its physiological properties; as in the case of fevers, or of colds, or other in-

flammatory diseases, produced by the application of damp air: or to experience immediate uneasiness, as in the case of relaxation or chilliness produced by an over or under proportion of the matter of heat.

Difference between strength and hardiness. Hardiness, even in the sense in which it is opposed to the action of mechanical causes, is distinguishable from strength. The external indications of strength are the abundance and firmness of the muscular fibres: those of hardiness, in this sense, are the firmness of the muscular fibres, and the callosity of the skin. Strength is more peculiarly the gift of nature: hardiness, of education. Of two persons who have had, the one the education of a gentleman, the other, that of a common sailor, the first may be the stronger, at the same time that the other is the hardier.

X. 4. *Bodily imperfection.* By bodily imperfection may be understood that condition which a person is in, who either stands distinguished by any remarkable deformity, or wants any of those parts or faculties, which the ordinary run of persons of the same sex and age are furnished with: who, for instance, has a hare-lip, is deaf, or has lost a hand. This circumstance, like that of ill-health, tends in general to diminish more or less the effect of any pleasurable circumstance, and to increase that of any afflictive one. The effect of this circumstance, however, admits of great variety inasmuch as there are a great variety of ways in which a man may suffer in his personal appearance, and in his bodily organs and faculties: all which differences will be taken notice of in their proper places.[87]

XI. 5. *Quantity and quality of knowledge.* So much for circumstances belonging to the condition of the body: we come now to those which concern the condition of the mind: the use of mentioning these will be seen hereafter. In the first place may be reckoned the quantity and quality of the knowledge the person in question happens to possess: that is, of the ideas which he has actually in store, ready upon occasion to call to mind: meaning such ideas as are in some way or other of an interesting nature: that is, of a nature in some way or other to influence his happiness, or that of

other men. When these ideas are many, and of importance, a man is said to be a man of knowledge; when few, or not of importance, *ignorant*.

XII. 6. *Strength of intellectual powers*. By strength of intellectual powers may be understood the degree of facility which a man experiences in his endeavours to call to mind as well such ideas as have been already aggregated to his stock of knowledge, as any others, which, upon any occasion that may happen, he may conceive a desire to place there. It seems to be on some such occasion as this that the words *parts* and *talents* are commonly employed. To this head may be referred the several qualities of readiness of apprehension, accuracy and tenacity of memory, strength of attention, clearness of discernment, amplitude of comprehension, vividity and rapidity of imagination. Strength of intellectual powers, in general, seems to correspond pretty exactly to general strength of body: as any of these qualities in particular does to particular strength.

XIII. 7. *Firmness of mind*. Firmness of mind on the one hand, and irritability on the other, regard the proportion between the degrees of efficacy with which a man is acted upon by an exciting cause, of which the value lies chiefly in magnitude, and one of which the value lies chiefly in propinquity.[88] A man may be said to be of a firm mind, when small pleasures or pains, which are present or near, do not affect him, in a greater proportion to their value, than greater pleasures or pains, which are uncertain or remote,[89] of an irritable mind, when the contrary is the case.

XIV. 8. *Steadiness*. Steadiness regards the time during which a given exciting cause of a given value continues to affect a man in nearly the same manner and degree as at first, no assignable external event or change of circumstances intervening to make an alteration in its force.[40]

XV. 9. *Bent of inclinations*. By the bent of a man's inclinations may be understood the propensity he has to expect pleasure or pain from certain objects, rather than from others. A man's inclinations may be said to have such or such a bent, when, amongst the several sorts of objects

which afford pleasure in some degree to all men, he is apt to expect more pleasure from one particular sort, than from another particular sort, or more from any given particular sort, than another man would expect from that sort; or when, amongst the several sorts of objects, which to one man afford pleasure, whilst to another they afford none, he is apt to expect, or not to expect, pleasure from an object of such or such a sort: so also with regard to pains. This circumstance, though intimately connected with that of the bias of a man's sensibility, is not undistinguishable from it. The quantity of pleasure or pain, which on any given occasion a man may experience from an application of any sort, may be greatly influenced by the expectations he has been used to entertain of pleasure or pain from that quarter; but it will not be absolutely determined by them: for pleasure or pain may come upon him from a quarter from which he was not accustomed to expect it.

XVI. 10. *Moral sensibility*. The circumstances of *moral, religious, sympathetic,* and *antipathetic sensibility,* when closely considered, will appear to be included in some sort under that of *bent of inclination*. On account of their particular importance they may, however, be worth mentioning apart. A man's moral sensibility may be said to be strong, when the pains and pleasures of the moral sanction [41] show greater in his eyes, in comparison with other pleasures and pains (and consequently exert a stronger influence) than in the eyes of the persons he is compared with; in other words, when he is acted on with more than ordinary efficacy by the sense of honour: it may be said to be weak, when the contrary is the case.

XVII. 11. *Moral biases*. Moral sensibility seems to regard the average effect or influence of the pains and pleasures of the moral sanction, upon all sorts of occasions to which it is applicable, or happens to be applied. It regards the average force or *quantity* of the impulses the mind receives from that source during a given period. Moral *bias* regards the particular acts on which, upon so many particular occasions, the force of that sanction is looked upon as attaching. It regards the *quality* or direction of those im-

pulses. It admits of as many varieties, therefore, as there are dictates which the moral sanction may be conceived to issue forth. A man may be said to have such or such a *moral bias*, or to have a moral bias in favour of such or such an action, when he looks upon it as being of the number of those of which the performance is dictated by the moral sanction.

XVIII. 12. *Religious sensibility*. What has been said with regard to moral sensibility, may be applied, *mutatis mutandis*, to religious.

XIX. 13. *Religious biases*. What has been said with regard to moral biases, may also be applied, *mutatis mutandis*, to religious biases.

XX. 14. *Sympathetic sensibility*. By sympathetic sensibility is to be understood the propensity that a man has to derive pleasure from the happiness, and pain from the unhappiness, of other sensitive beings. It is the stronger, the greater the ratio of the pleasure or pain he feels on their account is to that of the pleasure or pain which (according to what appears to him) they feel for themselves.

XXI. 15. *Sympathetic biases*. Sympathetic bias regards the description of the parties who are the objects of a man's sympathy: and of the acts or other circumstances of or belonging to those persons, by which the sympathy is excited. These parties may be, 1. Certain individuals. 2. Any subordinate class of individuals. 3. The whole nation. 4. Human kind in general. 5. The whole sensitive creation. According as these objects of sympathy are more numerous, the *affection*, by which the man is biased, may be said to be the more *enlarged*.

XXII. 16, 17. *Antipathetic sensibility and biases*. Antipathetic sensibility and antipathetic biases are just the reverse of sympathetic sensibility and sympathetic biases. By antipathetic sensibility is to be understood the propensity that a man has to derive pain from the happiness, and pleasure from the unhappiness, of other sensitive beings.

XXIII. 18. *Insanity*. The circumstance of insanity of mind corresponds to that of bodily imperfection. It admits, however, of much less variety, inasmuch as the soul is (for

aught we can perceive) one indivisible thing, not distinguishable, like the body, into parts. What lesser degrees of imperfection the mind may be susceptible of, seem to be comprisable under the already-mentioned heads of ignorance, weakness of mind, irritability, or unsteadiness; or under such others as are reducible to them. Those which are here in view are those extraordinary species and degrees of mental imperfection, which, wherever they take place, are as conspicuous and as unquestionable as lameness or blindness in the body: operating partly, it should seem, by inducing an extraordinary degree of the imperfections above mentioned, partly by giving an extraordinary and preposterous bent to the inclinations.

XXIV. 19. *Habitual occupations.* Under the head of a man's habitual occupations, are to be understood, on this occasion, as well those which he pursues for the sake of profit, as those which he pursues for the sake of present pleasure. The consideration of the profit itself belongs to the head of a man's pecuniary circumstances. It is evident, that if by any means a punishment, or any other exciting cause, has the effect of putting it out of his power to continue in the pursuit of any such occupation, it must on that account be so much the more distressing. A man's habitual occupations, though intimately connected in point of causality with the bent of his inclinations, are not to be looked upon as precisely the same circumstance. An amusement, or channel of profit, may be the object of a man's *inclinations*, which has never been the subject of his *habitual occupations*; for it may be, that though he wished to betake himself to it, he never did, it not being in his power: a circumstance which may make a good deal of difference in the effect of any incident by which he happens to be debarred from it.

XXV. 20. *Pecuniary circumstances.* Under the head of pecuniary circumstances, I mean to bring to view the proportion which a man's *means* bear to his *wants*: the sum total of his means of every kind, to the sum total of his wants of every kind. A man's means depend upon three circumstances: 1. His property. 2. The profit of his labour. 3. His connexions in the way of support. His wants seem

to depend upon four circumstances. 1. His habits of expense. 2. His connexions in the way of burthen. 3. Any present casual demand he may have. 4. The strength of his expectation. By a man's property is to be understood whatever he has in store independent of his labour. By the profit of his labour is to be understood the growing profit. As to labour, it may be either of the body principally, or of the mind principally, or of both indifferently: nor does it matter in what manner, nor on what subject, it be applied, so it produce a profit. By a man's connexions in the way of support, are to be understood the pecuniary assistances, of whatever kind, which he is in a way of receiving from any persons who, on whatever account, and in whatever proportion, he has reason to expect should contribute *gratis* to his maintenance: such as his parents, patrons, and relations. It seems manifest, that a man can have no other means than these. What he uses, he must have either of his own, or from other people: if from other people, either *gratis* or for a price. As to habits of expense, it is well known, that a man's desires are governed in a great degree by his habits. Many are the cases in which desire (and consequently the pain of privation connected with it[42]) would not even subsist at all, but for previous enjoyment. By a man's connexions in the way of burthen, are to be understood whatever expense he has reason to look upon himself as bound to be at in the support of those who by law, or the customs of the world, are warranted in looking up to him for assistance; such as children, poor relations, superannuated servants, and any other dependents whatsoever. As to present casual demand, it is manifest, that there are occasions on which a given sum will be worth infinitely more to a man than the same sum would at another time: where, for example, in a case of extremity, a man stands in need of extraordinary medical assistance: or wants money to carry on a law-suit, on which his all depends: or has got a livelihood waiting for him in a distant country, and wants money for the charges of conveyance. In such cases, any piece of good or ill fortune, in the pecuniary way, might have a very different effect from what it would have at any other

time. With regard to strength of expectation; when one man expects to gain or to keep a thing which another does not, it is plain the circumstance of not having it will affect the former very differently from the latter; who, indeed, commonly will not be affected by it at all.

XXVI. 21. *Connexions in the way of sympathy.* Under the head of a man's connexions in the way of sympathy, I would bring to view the number and description of the persons in whose welfare he takes such a concern, as that the idea of their happiness should be productive of pleasure, and that of their unhappiness of pain to him: for instance, a man's wife, his children, his parents, his near relations, and intimate friends. This class of persons, it is obvious, will for the most part include the two classes by which his pecuniary circumstances are affected: those, to wit, from whose means he may expect support, and those whose wants operate on him as a burthen. But it is obvious, that besides these, it may very well include others, with whom he has no such pecuniary connexion: and even with regard to these, it is evident that the pecuniary dependence, and the union of affections, are circumstances perfectly distinguishable. Accordingly, the connexions here in question, independently of any influence they may have on a man's pecuniary circumstances, have an influence on the effect of any exciting causes whatsoever. The tendency of them is to increase a man's general sensibility; to increase, on the one hand, the pleasure produced by all pleasurable causes; on the other, the pain produced by all afflictive ones. When any pleasurable incident happens to a man, he naturally, in the first moment, thinks of the pleasure it will afford immediately to himself: presently afterwards, however (except in a few cases, which is not worth while here to insist on) he begins to think of the pleasure which his friends will feel upon their coming to know of it: and this secondary pleasure is commonly no mean addition to the primary one. First comes the self-regarding pleasure: then comes the idea of the pleasure of sympathy, which you suppose that pleasure of yours will give birth to in the bosom of your friend: and this idea excites again in yours a new pleasure of

sympathy, grounded upon his. The first pleasure issuing from your own bosom, as it were from a radiant point, illuminates the bosom of your friend: reverberated from thence, it is reflected with augmented warmth to the point from whence it first proceeded: and so it is with pains.[43]

Nor does this effect depend wholly upon affection. Among near relations, although there should be no kindness, the pleasures and pains of the moral sanction are quickly propagated by a peculiar kind of sympathy: no article, either of honour or disgrace, can well fall upon a man, without extending to a certain distance within the circle of his family. What reflects honour upon the father, reflects honour upon the son: what reflects disgrace, disgrace. The *cause* of this singular and seemingly unreasonable circumstance (that is, its analogy to the rest of the phenomena of the human mind,) belongs not to the present purpose. It is sufficient if the effect be beyond dispute.

XXVII. 22. *Connexions in the way of antipathy.* Of a man's connexions in the way of antipathy, there needs not any thing very particular to be observed. Happily there is no primæval and constant source of antipathy in human nature, as there is of sympathy. There are no permanent sets of persons who are naturally and of course the objects of antipathy to a man, as there are who are the objects of the contrary affection. Sources, however, but too many, of antipathy, are apt to spring up upon various occasions during the course of a man's life: and whenever they do, the circumstance may have a very considerable influence on the effects of various exciting causes. As on the one hand, a punishment, for instance, which tends to separate a man from those with whom he is connected in the way of sympathy, so on the other hand, one which tends to force him into the company of those with whom he is connected in the way of antipathy, will, on that account, be so much the more distressing. It is to be observed, that sympathy itself multiplies the sources of antipathy. Sympathy for your friend gives birth to antipathy on *your* part against all those who are objects of antipathy, as well as to sympathy for those who are objects of sympathy to *him*. In the same manner does

antipathy multiply the sources of sympathy; though commonly perhaps with rather a less degree of efficacy. Antipathy against your enemy is apt to give birth to sympathy on *your* part towards those who are objects of antipathy, as well as to antipathy against those who are objects of sympathy, to *him*.

XXVIII. 23. *Radical frame of body.* Thus much for the circumstances by which the effect of any exciting cause may be influenced, when applied upon any given occasion, at any given period. But besides these supervening incidents, there are other circumstances relative to a man, that may have their influence, and which are co-eval to his birth. In the first place, it seems to be universally agreed, that in the original frame or texture of every man's body, there is a something which, independently of all subsequently intervening circumstances, renders him liable to be affected by causes producing bodily pleasure or pain, in a manner different from that in which another man would be affected by the same causes. To the catalogue of circumstances influencing a man's sensibility, we may therefore add his original or radical frame, texture, constitution, or temperament of body.

XXIX. 24. *Radical frame of mind.* In the next place, it seems to be pretty well agreed, that there is something also in the original frame or texture of every man's mind, which, independently of all exterior and subsequently intervening circumstances, and even of his radical frame of body, makes him liable to be differently affected by the same exciting causes, from what another man would be. To the catalogue of circumstances influencing a man's sensibility, we may therefore further add his original or radical frame, texture, constitution or temperament of mind.[44]

XXX. *This distinct from the circumstance of frame of body;* It seems pretty certain, all this while, that a man's sensibility to causes producing pleasure or pain, even of mind, may depend in a considerable degree upon his original and acquired frame of body. But we have no reason to think that it can depend altogether upon that frame: since, on the one hand, we see persons whose frame of body is as much

alike as can be conceived, differing very considerably in respect of their mental frame: and, on the other hand, persons whose frame of mind is as much alike as can be conceived, differing very conspicuously in regard to their bodily frame.[45]

XXXI. *—and from all others.* It seems indisputable also, that the different sets of external occurrences that may befall a man in the course of his life, will make great differences in the subsequent texture of his mind at any given period: yet still those differences are not solely to be attributed to such occurrences. Equally far from the truth seems that opinion to be (if any such be maintained) which attributes all to nature, and that which attributes all to education. The two circumstances will therefore still remain distinct, as well from one another, as from all others.

XXXII. *Yet the result of them is not separately discernible.* Distinct however as they are, it is manifest, that at no period in the active part of a man's life can they either of them make their appearance by themselves. All they do is to constitute the latent ground-work which the other supervening circumstances have to work upon: and whatever influence those original principles may have, is so changed and modified, and covered over, as it were, by those other circumstances, as never to be separately discernible. The effects of the one influence are indistinguishably blended with those of the other.

XXXIII. *Frame of body indicates, but not certainly, that of mind.* The emotions of the body are received, and with reason, as probable indications of the temperature of the mind. But they are far enough from conclusive. A man may exhibit, for instance, the exterior appearances of grief, without really grieving at all, or at least in any thing near the proportion in which he appears to grieve. Oliver Cromwell, whose conduct indicated a heart more than ordinarily callous, was as remarkably profuse in tears.[46] Many men can command the external appearances of sensibility with very little real feeling.[47] The female sex commonly with greater facility than the male: hence the proverbial expression of a woman's tears. To have this kind of command over one's self, was the characteristic excellence of the orator of ancient times, and is still that of the player in our own.

XXXIV. *Secondary influencing circumstances.* The remaining circumstances may, with reference to those already mentioned, be termed *secondary* influencing circumstances. These have an influence, it is true, on the quantum or bias of a man's sensibility, but it is only by means of the other primary ones. The manner in which these two sets of circumstances are concerned, is such that the primary ones do the business, while the secondary ones lie most open to observation. The secondary ones, therefore, are those which are most heard of; on which account it will be necessary to take notice of them: at the same time that it is only by means of the primary ones that their influence can be explained; whereas the influence of the primary ones will be apparent enough, without any mention of the secondary ones.

XXXV. 25. *Sex.* Among such of the primitive modifications of the corporeal frame as may appear to influence the quantum and bias of sensibility, the most obvious and conspicuous are those which constitute the *sex*. In point of quantity, the sensibility of the female sex appears in general to be greater than that of the male. The health of the female is more delicate than that of the male: in point of strength and hardiness of body, in point of quantity and quality of knowledge, in point of strength of intellectual powers, and firmness of mind, she is commonly inferior: moral, religious, sympathetic, and antipathetic sensibility are commonly stronger in her than in the male. The quality of her knowledge, and the bent of her inclinations, are commonly in many respects different. Her moral biases are also, in certain respects, remarkably different: chastity, modesty, and delicacy, for instance, are prized more than courage in a woman: courage, more than any of those qualities, in a man. The religious biases in the two sexes are not apt to be remarkably different; except that the female is rather more inclined than the male to superstition; that is, to observances not dictated by the principle of utility; a difference that may be pretty well accounted for by some of the before-mentioned circumstances. Her sympathetic biases are in many respects different; for her own offspring all their lives long, and for children in general while young, her affection is commonly

stronger than that of the male. Her affections are apt to be less enlarged: seldom expanding themselves so much as to take in the welfare of her country in general, much less that of mankind, or the whole sensitive creation: seldom embracing any extensive class or division, even of her own countrymen, unless it be in virtue of her sympathy for some particular individuals that belong to it. In general, her antipathetic, as well as sympathetic biases, are apt to be less conformable to the principle of utility than those of the male; owing chiefly to some deficiency in point of knowledge, discernment, and comprehension. Her habitual occupations of the amusing kind are apt to be in many respects different from those of the male. With regard to her connexions in the way of sympathy, there can be no difference. In point of pecuniary circumstances, according to the customs of perhaps all countries, she is in general less independent.

XXXVI. 26. *Age*. Age is of course divided into divers periods, of which the number and limits are by no means uniformly ascertained. One might distinguish it, for the present purpose, into, 1. Infancy. 2. Adolescence. 3. Youth. 4. Maturity. 5. Decline. 6. Decrepitude. It were lost time to stop on the present occasion to examine it at each period, and to observe the indications it gives, with respect to the several primary circumstances just reviewed. Infancy and decrepitude are commonly inferior to the other periods, in point of health, strength, hardiness, and so forth. In infancy, on the part of the female, the imperfections of that sex are enhanced: on the part of the male, imperfections take place mostly similar in quality, but greater in quantity, to those attending the states of adolescence, youth, and maturity in the female. In the stage of decrepitude both sexes relapse into many of the imperfections of infancy. The generality of these observations may easily be corrected upon a particular review.

XXXVII. 27. *Rank*. Station, or rank in life, is a circumstance, that, among a civilized people, will commonly undergo a multiplicity of variations. *Cæteris paribus*, the quantum of sensibility appears to be greater in the higher ranks of men than in the lower. The primary circumstances in respect of which this secondary circumstance is apt to induce or

indicate a difference, seem principally to be as follows: 1. Quantity and Quality of knowledge. 2. Strength of mind. 3. Bent of inclination. 4. Moral sensibility. 5. Moral biases. 6. Religious sensibility. 7. Religious biases. 8. Sympathetic sensibility. 9. Sympathetic biases. 10. Antipathetic sensibility. 11. Antipathetic biases. 12. Habitual occupations. 13. Nature and productiveness of a man's means of livelihood. 14. Connexions importing profit. 15. Habit of expense. 16. Connexions importing burthen. A man of a certain rank will frequently have a number of dependents besides those whose dependency is the result of natural relationship. As to health, strength, and hardiness, if rank has any influence on these circumstances, it is but in a remote way, chiefly by the influence it may have on its habitual occupations.

XXXVIII. 28. *Education.* The influence of education is still more extensive. Education stands upon a footing somewhat different from that of the circumstances of age, sex, and rank. These words, though the influence of the circumstances they respectively denote exerts itself principally, if not entirely, through the medium of certain of the primary circumstances before mentioned, present, however, each of them a circumstance which has a separate existence of itself. This is not the case with the word education: which means nothing any farther than as it serves to call up to view some one or more of those primary circumstances. Education may be distinguished into physical and mental; the education of the body and that of the mind: mental, again, into intellectual and moral; the culture of the understanding, and the culture of the affections. The education a man receives, is given to him partly by others, partly by himself. By education then nothing more can be expressed than the condition a man is in in respect of those primary circumstances, as resulting partly from the management and contrivance of others, principally of those who in the early periods of his life have had dominion over him, partly from his own. To the physical part of his education, belong the circumstances of health, strength, and hardiness: sometimes, by accident, that of bodily imperfection; as where by intemperance or negligence an irreparable mischief happens to his person. To the

intellectual part, those of quantity and quality of knowledge, and in some measure perhaps those of firmness of mind and steadiness. To the moral part, the bent of his inclinations, the quantity and quality of his moral, religious, sympathetic, and antipathetic sensibility: to all three branches indiscriminately, but under the superior control of external occurrences, his habitual recreations, his property, his means of livelihood, his connexions in the way of profit and of burthen, and his habits of expense. With respect indeed to all these points, the influence of education is modified, in a manner more or less apparent, by that of exterior occurrences; and in a manner scarcely at all apparent, and altogether out of the reach of calculation, by the original texture and constitution as well of his body as of his mind.

XXXIX. 29. *Climate.* Among the external circumstances by which the influence of education is modified, the principal are those which come under the head of *climate*. This circumstance places itself in front, and demands a separate denomination, not merely on account of the magnitude of its influence, but also on account of its being conspicuous to every body, and of its applying indiscriminately to great numbers at a time. This circumstance depends for its *essence* upon the situation of that part of the earth which is in question, with respect to the course taken by the whole planet in its revolution round the sun: but for its *influence* it depends upon the condition of the bodies which compose the earth's surface at that part, principally upon the quantities of sensible heat at different periods, and upon the density, and purity, and dryness or moisture of the circumambient air. Of the so often mentioned primary circumstances, there are few of which the production is not influenced by this secondary one; partly by its manifest effects upon the body; partly by its less perceptible effects upon the mind. In hot climates men's health is apt to be more precarious than in cold: their strength and hardiness less: their vigour, firmness, and steadiness of mind less: and thence indirectly their quantity of knowledge: the bent of their inclinations different: most remarkably so in respect of their superior propensity to sexual enjoyments, and in respect of the earliness of the period at

which that propensity begins to manifest itself: their sensibilities of all kinds more intense: their habitual occupations savouring more of sloth than of activity: their radical frame of body less strong, probably, and less hardy: their radical frame of mind less vigorous, less firm, less steady.

XL. 30. *Lineage.* Another article in the catalogue of secondary circumstances, is that of *race* or *lineage*: the national race or lineage a man issues from. This circumstance, independently of that of climate, will commonly make some difference in point of radical frame of mind and body. A man of negro race, born in France or England, is a very different being, in many respects, from a man of French or English race. A man of Spanish race, born in Mexico or Peru, is at the hour of his birth a different sort of being, in many respects, from a man of the original Mexican or Peruvian race. This circumstance, as far as it is distinct from climate, rank, and education, and from the two just mentioned, operates chiefly through the medium of moral, religious, sympathetic, and antipathetic biases.

XLI. 31. *Government.* The last circumstance but one, is that of government: the government a man lives under at the time in question; or rather that under which he has been accustomed most to live. This circumstance operates principally through the medium of education: the magistrate operating in the character of a tutor upon all the members of the state, by the direction he gives to their hopes and to their fears. Indeed under a solicitous and attentive government, the ordinary preceptor, nay even the parent himself, is but a deputy, as it were, to the magistrate: whose controlling influence, different in this respect from that of the ordinary preceptor, dwells with a man to his life's end. The effects of the peculiar power of the magistrate are seen more particularly in the influence it exerts over the quantum and bias of men's moral, religious, sympathetic, and antipathetic sensibilities. Under a well-constituted, or even under a well-administered though ill-constituted government, men's moral sensibility is commonly stronger, and their moral biases more conformable to the dictates of utility: their religious sensibility fre-

quently weaker, but their religious biases less unconformable to the dictates of utility: their sympathetic affections more enlarged, directed to the magistrate more than to small parties or to individuals, and more to the whole community than to either: their antipathetic sensibilities less violent, as being more obsequious to the influence of well-directed moral biases, and less apt to be excited by that of ill-directed religious ones: their antipathetic biases more conformable to well-directed moral ones, more apt (in proportion) to be grounded on enlarged and sympathetic than on narrow and self-regarding affections, and accordingly, upon the whole, more conformable to the dictates of utility.

XLII. 32. *Religious profession.* The last circumstance is that of religious profession: the religious profession a man is of: the religious fraternity of which he is a member. This circumstance operates principally through the medium of religious sensibility and religious biases. It operates, however, as an indication more or less conclusive, with respect to several other circumstances. With respect to some, scarcely but through the medium of the two just mentioned: this is the case with regard to the quantum and bias of a man's moral, sympathetic, and antipathetic sensibility: perhaps in some cases with regard to quantity and quality of knowledge, strength of intellectual powers, and bent of inclination. With respect to others, it may operate immediately of itself: this seems to be the case with regard to a man's habitual occupations, pecuniary circumstances, and connexions in the way of sympathy and antipathy. A man who pays very little inward regard to the dictates of the religion which he finds it necessary to profess, may find it difficult to avoid joining in the ceremonies of it, and bearing a part in the pecuniary burthens it imposes.[48] By the force of habit and example he may even be led to entertain a partiality for persons of the same profession, and a proportionable antipathy against those of a rival one. In particular, the antipathy against persons of different persuasions is one of the last points of religion which men part with. Lastly, it is obvious, that the religious profession a man is of cannot but have a considerable influence on

his education. But, considering the import of the term education, to say this is perhaps no more than saying in other words what has been said already.

XLIII. *Use of the preceding observations.* These circumstances, all or many of them, will need to be attended to as often as upon any occasion any account is taken of any quantity of pain or pleasure, as resulting from any cause. Has any person sustained an injury? they will need to be considered in estimating the mischief of the offence. Is satisfaction to be made to him? they will need to be attended to in adjusting the *quantum* of that satisfaction. Is the injurer to be punished? they will need to be attended to in estimating the force of the impression that will be made on him by any given punishment.

XLIV. *How far the circumstances in question can be taken into account.* It is to be observed, that though they seem all of them, on some account or other, to merit a place in the catalogue, they are not all of equal use in practice. Different articles among them are applicable to different exciting causes. Of those that may influence the effect of the same exciting cause, some apply indiscriminately to whole classes of persons together: being applicable to all, without any remarkable difference in degree: these may be directly and pretty fully provided for by the legislator. This is the case, for instance, with the primary circumstances of bodily imperfection, and insanity: with the secondary circumstance of sex: perhaps with that of age: at any rate with those of rank, of climate, of lineage, and of religious profession. Others, however they may apply to whole classes of persons, yet in their application to different individuals are susceptible of perhaps an indefinite variety of degrees. These cannot be fully provided for by the legislator; but, as the existence of them, in every sort of case, is capable of being ascertained, and the degree in which they take place is capable of being measured, provision may be made for them by the judge, or other executive magistrate, to whom the several individuals that happen to be concerned may be made known. This is the case, 1. With the circumstance of health. 2. In some sort with that of strength. 3. Scarcely with that of hardiness: still less with

those of quantity and quality of knowledge, strength of intellectual powers, firmness or steadiness of mind; except in as far as a man's condition, in respect of those circumstances, may be indicated by the secondary circumstances of sex, age, or rank: hardly with that of bent of inclination, except in as far as that latent circumstance is indicated by the more manifest one of habitual occupations: hardly with that of a man's moral sensibility or biases, except in as far as they may be indicated by his sex, age, rank, and education: not at all with his religious sensibility and religious biases, except in as far as they may be indicated by the religious profession he belongs to: not at all with the quantity or quality of his sympathetic or antipathetic sensibilities, except in as far as they may be presumed from his sex, age, rank, education, lineage, or religious profession. It is the case, however, with his habitual occupations, with his pecuniary circumstances, and with his connexions in the way of sympathy. Of others, again, either the existence cannot be ascertained, or the degree cannot be measured. These, therefore, cannot be taken into account, either by the legislator or the executive magistrate. Accordingly, they would have no claim to be taken notice of, were it not for those secondary circumstances by which they are indicated, and whose influence could not well be understood without them. What these are has been already mentioned.

XLV. *To what exciting causes there is most occasion to apply them.* It has already been observed, that different articles in this list of circumstances apply to different exciting causes: the circumstance of bodily strength, for instance, has scarcely any influence of itself (whatever it may have in a roundabout way, and by accident) on the effect of an incident which should increase or diminish the quantum of a man's property. It remains to be considered, what the exciting causes are with which the legislator has to do. These may, by some accident or other, be any whatsoever: but those which he has principally to do, are those of the painful or afflictive kind. With pleasurable ones he has little to do, except now and then by accident: the reasons of which may be easily enough perceived, at the same time that it would take

up too much room to unfold them here. The exciting causes with which he has principally to do, are, on the one hand, the mischievous acts, which it is his business to prevent; on the other hand, the punishments, by the terror of which it is his endeavour to prevent them. Now of these two sets of exciting causes, the latter only is of his production: being produced partly by his own special appointment, partly in conformity to his general appointment, by the special appointment of the judge. For the legislator, therefore, as well as for the judge, it is necessary (if they would know what it is they are doing when they are appointing punishment) to have an eye to all these circumstances. For the legislator, lest, meaning to apply a certain quantity of punishment to all persons who shall put themselves in a given predicament, he should unawares apply to some of those persons much more or much less than he himself intended: for the judge, lest, in applying to a particular person a particular measure of punishment, he should apply much more or much less than was intended, perhaps by himself, and at any rate by the legislator. They ought each of them, therefore, to have before him, on the one hand, a list of the several circumstances by which sensibility may be influenced; on the other hand, a list of the several species and degrees of punishment which they purpose to make use of: and then, by making a comparison between the two, to form a detailed estimate of the influence of each of the circumstances in question, upon the effect of each species and degree of punishment.

There are two plans or orders of distribution, either of which might be pursued in the drawing up this estimate. The one is to make the name of the circumstance take the lead, and under it to represent the different influences it exerts over the effects of the several modes of punishment: the other is to make the name of the punishment take the lead, and under it to represent the different influences which are exerted over the effects of it by the several circumstances above mentioned. Now of these two sorts of objects, the punishment is that to which the intention of the legislator is directed in the first instance. This is of his own creation, and will be whatsoever he thinks fit to make it: the influencing

circumstance exists independently of him, and is what it is whether he will or no. What he has occasion to do is to establish a certain species and degree of punishment: and it is only with reference to that punishment that he has occasion to make any inquiry concerning any of the circumstances here in question. The latter of the two plans therefore is that which appears by far the most useful and commodious. But neither upon the one nor the other plan can any such estimate be delivered here.[49]

XLVI. *Analytical view of the circumstances influencing sensibility.* Of the several circumstances contained in this catalogue, it may be of use to give some sort of analytic view; in order that it may be the more easily discovered if any which ought to have been inserted are omitted; and that, with regard to those which are inserted, it may be seen how they differ and agree.

In the first place, they may be distinguished into *primary* and *secondary*: those may be termed primary, which operate immediately of themselves: those secondary, which operate not but by the medium of the former. To this latter head belong the circumstances of sex, age, station in life, education, climate, lineage, government, and religious profession: the rest are primary. These again are either *connate* or *adventitious*: those which are connate, are radical frame of body and radical frame of mind. Those which are adventitious, are either *personal*, or *exterior*. The personal, again, concern either a man's *dispositions*, or his *actions*. Those which concern his dispositions, concern either his *body* or his *mind*. Those which concern his body are health, strength, hardiness, and bodily imperfection. Those which concern his mind, again, concern either his *understanding* or his *affections*. To the former head belong the circumstances of quantity and quality of knowledge, strength of understanding, and insanity. To the latter belong the circumstances of firmness of mind, steadiness, bent of inclination, moral sensibility, moral biases, religious sensibility, religious biases, sympathetic sensibility, sympathetic biases, antipathetic sensibility, and antipathetic biases. Those which regard his actions, are his habitual occupations. Those which are exterior to him, regard

either the *things* or the *persons* which he is concerned with; under the former head come his pecuniary circumstances; [50] under the latter, his connexions in the way of sympathy and antipathy.

CHAPTER VII.

OF HUMAN ACTIONS IN GENERAL.

I. *The demand for punishment depends in part upon the tendency of the act.* The business of government is to promote the happiness of the society, by punishing and rewarding. That part of its business which consists in punishing, is more particularly the subject of penal law. In proportion as an act tends to disturb that happiness, in proportion as the tendency of it is pernicious, will be the demand it creates for punishment. What happiness consists of we have already seen: enjoyment of pleasures, security from pains.

II. *Tendency of an act determined by its consequences.* The general tendency of an act is more or less pernicious, according to the sum total of its consequences: that is, according to the difference between the sum of such as are good, and the sum of such as are evil.

III. *Material consequences only are to be regarded.* It is to be observed, that here, as well as henceforward, wherever consequences are spoken of, such only are meant as are *material*. Of the consequences of any act, the multitude and variety must needs be infinite: but such of them only as are material are worth regarding. Now among the consequences of an act, be they what they may, such only, by one who views them in the capacity of a legislator, can be said to be material,[51] as either consist of pain or pleasure, or have an influence in the production of pain or pleasure.[52]

IV. *These depend in part upon the intention.* It is also to be observed, that into the account of the consequences of the act, are to be taken not such only as might have ensued, were

intention out of the question, but such also as depend upon the connexion there may be between these first-mentioned consequences and the intention. The connexion there is between the intention and certain consequences is, as we shall see hereafter,[68] a means of producing other consequences. In this lies the difference between rational agency and irrational.

V. *The intention depends as well upon the understanding as the will.* Now the intention, with regard to the consequences of an act, will depend upon two things: 1. The state of the will or intention, with respect to the act itself. And, 2. The state of the understanding, or perceptive faculties, with regard to the circumstances which it is, or may appear to be, accompanied with. Now with respect to these circumstances, the perceptive faculty is susceptible of three states: consciousness, unconsciousness, and false consciousness. Consciousness, when the party believes precisely those circumstances, and no others, to subsist, which really do subsist: unconsciousness, when he fails of perceiving certain circumstances to subsist, which, however, do subsist: false consciousness, when he believes or imagines certain circumstances to subsist, which in truth do not subsist.

VI. *In an action are to be considered 1. The act. 2. The circumstances. 3. The intentionality. 4. The consciousness.* In every transaction, therefore, which is examined with a view to punishment, there are four articles to be considered: 1. The *act* itself, which is done. 2. The *circumstances* in which it is done. 3. The *intentionality* that may have accompanied it. 4. The *consciousness*, unconsciousness, or false consciousness, that may have accompanied it.

What regards the act and the circumstances will be the subject of the present chapter: what regards intention and consciousness, that of the two succeeding.

VII. 5. *The motives.* 6. *The disposition.* There are also two other articles on which the general tendency of an act depends: and on that, as well as on other accounts, the demand which it creates for punishment. These are, 1. The particular *motive* or motives which give birth to it. 2. The general *disposition* which it indicates. These articles will be the subject of two other chapters.

VIII. *Acts positive and negative.* Acts may be distinguished in several ways, for several purposes.

They may be distinguished, in the first place, into *positive* and *negative.* By positive are meant such as consist in motion or exertion: by negative, such as consist in keeping at rest; that is, in forbearing to move or exert one's self in such and such circumstances. Thus, to strike is a positive act: not to strike on a certain occasion, a negative one. Positive acts are styled also acts of commission; negative, acts of omission or forbearance.[54]

IX. *Negative acts may be so relatively or absolutely.* Such acts, again, as are negative, may either be *absolutely* so, or *relatively:* absolutely, when they import the negation of all positive agency whatsoever; for instance, not to strike at all: relatively, when they import the negation of such or such a particular mode of agency; for instance, not to strike such a person or such a thing, or in such a direction.

X. *Negative acts may be expressed positively; and* vice versa. It is to be observed, that the nature of the act, whether positive or negative, is not to be determined immediately by the form of the discourse made use of to express it. An act which is positive in its nature may be characterized by a negative expression: thus, not to be at rest, is as much as to say to move. So also an act, which is negative in its nature, may be characterized by a positive expression: thus, to forbear or omit to bring food to a person in certain circumstances, is signified by the single and positive term *to starve.*

XI. *Acts external and internal.* In the second place, acts may be distinguished into *external* and *internal.* By external, are meant corporal acts; acts of the body: by internal, mental acts; acts of the mind. Thus, to strike is an external or exterior [55] act: to intend to strike, an internal or interior one.

XII. *Acts of discourse, what.* Acts of *discourse* are a sort of mixture of the two: external acts, which are no ways material, nor attended with any consequences, any farther than as they serve to express the existence of internal ones. To speak to another to strike, to write to him to strike, to make signs to him to strike, are all so many acts of discourse.

XIII. *External acts may be transitive or intransitive.* Third,

Acts that are external may be distinguished into *transitive* and *intransitive*. Acts may be called transitive, when the motion is communicated from the person of the agent to some foreign body: that is, to such a foreign body on which the effects of it are considered as being *material*; as where a man runs against you, or throws water in your face. Acts may be called intransitive, when the motion is communicated to no other body, on which the effects of it are regarded as material, than some part of the same person in whom it originated: as where a man runs, or washes himself.[56]

XIV. *A transitive act, its commencement, termination, and intermediate progress.* An act of the transitive kind may be said to be in its *commencement*, or in the *first* stage of its progress, while the motion is confined to the person of the agent, and has not yet been communicated to any foreign body, on which the effects of it can be material. It may be said to be in its *termination*, or to be in the last stage of its progress, as soon as the motion or impulse has been communicated to some such foreign body. It may be said to be in the *middle* or intermediate stage or stages of its progress, while the motion, having passed from the person of the agent, has not yet been communicated to any such foreign body. Thus, as soon as a man has lifted up his hand to strike, the act he performs in striking you is in its commencement: as soon as his hand has reached you, it is in its termination. If the act be the motion of a body which is separated from the person of the agent before it reaches the object, it may be said, during that interval, to be in its intermediate progress,[57] or in *gradu mediativo:* as in the case where a man throws a stone or fires a bullet at you.

XV. *An intransitive act, its commencement, and termination.* An act of the intransitive kind may be said to be in its commencement, when the motion or impulse is as yet confined to the member or organ in which it originated; and has not yet been communicated to any member or organ that is distinguishable from the former. It may be said to be in its termination, as soon as it has been applied to any other part of the same person. Thus, where a man poisons himself, while

he is lifting up the poison to his mouth, the act is in its commencement: as soon as it has reached his lips, it is in its :ermination.[58]

XVI. *Acts transient and continued.* In the third place, acts nay be distinguished into *transient* and *continued.* Thus, to strike is a transient act: to lean, a continued one. To buy, a ransient act: to keep in one's possession, a continued one.

XVII. *Difference between a continued act and a repetition of acts.* In strictness of speech there is a difference between a *:ontinued* act and a *repetition* of acts. It is a repetition of icts, when there are intervals filled up by acts of different natures: a continued act, when there are no such intervals. Thus, :o lean, is one continued act: to keep striking, a repetition of icts.

XVIII. *Difference between a repetition of acts and a habit.* There is a difference, again, between a *repetition* of acts, and i *habit* or *practice.* The term repetition of acts may be employed, let the acts in question be separated by ever such short intervals, and let the sum total of them occupy ever so short a space of time. The term habit is not employed but when the acts in question are supposed to be separated by ong-continued intervals, and the sum total of them to occupy a considerable space of time. It is not (for instance) the drinking ever so many times, nor ever so much at a time, in the course of the same sitting, that will constitute a habit of drunkenness: it is necessary that such sittings themselves be frequently repeated. Every habit is a repetition of acts; or, to speak more strictly, when a man has frequently repeated such and such acts after considerable intervals, he is said to have persevered in or contracted a habit: but every repetition of acts is not a habit.[59]

XIX. *Acts are indivisible, or divisible; and divisible, as well with regard to matter as to motion.* Fourth, acts may be distinguished into *indivisible* and *divisible.* Indivisible acts are merely imaginary: they may be easily conceived, but can never be known to be exemplified. Such as are divisible may be so, with regard either to matter or to motion. An act indivisible with regard to matter, is the motion or rest of one single

atom of matter. An act indivisible, with regard to motion, the motion of any body, from one single atom of space to t next to it.

Fifth, acts may be distinguished into *simple* and *compl* simple, such as the act of striking, the act of leaning, or t act of drinking, above instanced: complex, consisting each a multitude of simple acts, which, though numerous a heterogeneous, derive a sort of unity from the relation th bear to some common design or end; such as the act of givi a dinner, the act of maintaining a child, the act of exhibiti a triumph, the act of bearing arms, the act of holding a cou and so forth.

XX. *Caution respecting the ambiguity of language.* It h been every now and then made a question, what it is in su a case that constitutes *one* act: where one act has ended, a another act has begun: whether what has happened has be one act or many.[60] These questions, it is now evident, m frequently be answered, with equal propriety, in opposi ways: and if there be any occasions on which they can be a swered only in one way, the answer will depend upon the n ture of the occasion, and the purpose for which the questi is proposed. A man is wounded in two fingers at one stro —Is it one wound or several? A man is beaten at 12 o'cloc and again at 8 minutes after 12—Is it one beating or se eral? You beat one man, and instantly in the same breath yc beat another—Is this one beating or several? In any of the cases it may be *one*, perhaps, as to some purposes, and *se eral* as to others. These examples are given, that men may l aware of the ambiguity of language: and neither harass then selves with unsolvable doubts, nor one another with inte minable disputes.

XXI. *Circumstances are to be considered.* So much wit regard to acts considered in themselves: we come now t speak of the *circumstances* with which they may have bee accompanied. These must necessarily be taken into the a count before any thing can be determined relative to the co sequences. What the consequences of an act may be upo the whole can never otherwise be ascertained: it can neve be known whether it is beneficial, or indifferent, or mischi

pus. In some circumstances even to kill a man may be a eneficial act: in others, to set food before him may be a ernicious one.

[XXII. *Circumstances, what.* Now the circumstances of an t, are, what? Any objects[61] whatsoever. Take any act whatever, there is nothing in the nature of things that excludes ny imaginable object from being a circumstance to it. Any ven object may be a circumstance to any other.[62]

[XXIII. *Circumstances material and immaterial.* We have eady had occasion to make mention for a moment of the *nsequences* of an act: these were distinguished into maial and immaterial. In like manner may the circumstances it be distinguished. Now *materiality* is a relative term: apied to the consequences of an act, it bore relation to pain nd pleasure: applied to the circumstances, it bears relation the consequences. A circumstance may be said to be maial, when it bears a visible relation in point of causality to e consequences: immaterial, when it bears no such visible lation.

[XXIV. *A circumstance may be related to an event in point causality, in four ways,* viz. 1. *Production.* 2. *Derivation.* 3. *ollateral connexion.* 4. *Conjunct influence.* The consenences of an act are events.[63] A circumstance may be reed to an event in point of causality in any one of four ys: 1. In the way of causation or production. 2. In the way derivation. 3. In the way of collateral connexion. 4. In e way of conjunct influence. It may be said to be related to e event in the way of causation, when it is of the number those that contribute to the production of such event: in e way of derivation, when it is of the number of the events the production of which that in question has been conbutory: in the way of collateral connexion, where the cirmstance in question, and the event in question, without ing either of them instrumental in the production of the her, are related, each of them, to some common object, ich has been concerned in the production of them both: in e way of conjunct influence, when, whether related in any her way or not, they have both of them concurred in the oduction of some common consequence.

XXV. *Example. Assassination of Buckingham.* An example may be of use. In the year 1628, Villiers, Duke of Buckingham, favourite and minister of Charles I. of England, received a wound and died. The man who gave it him was one Felton, who, exasperated at the mal-administration of which that minister was accused, went down from London to Portsmouth, where Buckingham happened then to be, made his way into his anti-chamber, and finding him busily engaged in conversation with a number of people round him, got close to him, drew a knife and stabbed him. In the effort, the assassin's hat fell off, which was found soon after, and, upon searching him, the bloody knife. In the crown of the hat were found scraps of paper, with sentences expressive of the purpose he was come upon. Here then, suppose the event in question is the wound received by Buckingham: Felton's drawing out his knife, his making his way into the chamber, his going down to Portsmouth, his conceiving an indignation at the idea of Buckingham's administration, that administration itself, Charles's appointing such a minister, and so on, higher and higher without end, are so many circumstances, related to the event of Buckingham's receiving the wound, in the way of causation or production: the bloodiness of the knife, a circumstance related to the same event in the way of derivation: the finding of the hat upon the ground, the finding the sentences in the hat, and the writing them, so many circumstances related to it in the way of collateral connexion: and the situation and conversations of the people about Buckingham, were circumstances related to the circumstances of Felton's making his way into the room, going down to Portsmouth, and so forth, in the way of conjunct influence; inasmuch as they contributed in common to the event of Buckingham's receiving the wound, by preventing him from putting himself upon his guard upon the first appearance of the intruder.[64]

XXVI. *It is not every event that has circumstances related to it in all those ways.* These several relations do not all of them attach upon an event with equal certainty. In the first place, it is plain, indeed, that every event must have some circumstance or other, and in truth, an indefinite multitude

of circumstances, related to it in the way of production: it must of course have a still greater multitude of circumstances related to it in the way of collateral connexion. But it does not appear necessary that every event should have circumstances related to it in the way of derivation: nor therefore that it should have any related to it in the way of conjunct influence. But of the circumstances of all kinds which actually do attach upon an event, it is only a very small number that can be discovered by the utmost exertion of the human faculties: it is a still smaller number that ever actually do attract our notice: when occasion happens, more or fewer of them will be discovered by a man in proportion to the strength, partly of his intellectual powers, partly of his inclination.[65] It appears therefore that the multitude and description of such of the circumstances belonging to an act, as may appear to be material, will be determined by two considerations: 1. By the nature of things themselves. 2. By the strength or weakness of the faculties of those who happen to consider them.

XXVII. *Use of this chapter.* Thus much it seemed necessary to premise in general concerning acts, and their circumstances, previously to the consideration of the particular sorts of acts with their particular circumstances, with which we shall have to do in the body of the work. An act of some sort or other is necessarily included in the notion of every offence. Together with this act, under the notion of the same offence, are included certain circumstances: which circumstances enter into the essence of the offence, contribute by their conjunct influence to the production of its consequences, and in conjunction with the act are brought into view by the name by which it stands distinguished. These we shall have occasion to distinguish hereafter by the name of *criminative* circumstances.[66] Other circumstances again entering into combination with the act and the former set of circumstances, are productive of still farther consequences. These additional consequences, if they are of the beneficial kind, bestow, according to the value they bear in that capacity, upon the circumstances to which they owe their birth the appellation of *exculpative* [67] or *extenuative* circumstances: [68] if of the mis-

chievous kind, they bestow on them the appellation of *aggravative* circumstances.[69] Of all these different sets of circumstances, the criminative are connected with the consequences of the original offence, in the way of production; with the act, and with one another, in the way of conjunct influence: the consequences of the original offence with them, and with the act respectively, in the way of derivation: the consequences of the modified offence, with the criminative, exculpative, and extenuative circumstances respectively, in the way also of derivation: these different sets of circumstances, with the consequences of the modified act or offence, in the way of production: and with one another (in respect of the consequences of the modified act or offence) in the way of conjunct influence. Lastly, whatever circumstances can be seen to be connected with the consequences of the offence, whether directly in the way of derivation, or obliquely in the way of collateral affinity (to wit, in virtue of its being connected, in the way of derivation, with some of the circumstances with which they stand connected in the same manner) bear a *material* relation to the offence in the way of evidence, they may accordingly be styled *evidentiary* circumstances, and may become of use, by being held forth upon occasion as so many proofs, indications, or evidences of its having been committed.[70]

CHAPTER VIII.

OF INTENTIONALITY.

I. *Recapitulation.* So much with regard to the first two of the articles upon which the evil tendency of an action may depend: *viz.* the act itself, and the general assemblage of the circumstances with which it may have been accompanied. We come now to consider the ways in which the particular circumstance of *intention* may be concerned in it.

II. *The intention may regard,* 1. *The act* or, 2. *The consequences.* First, then, the intention or will may regard either of two objects: 1. The act itself: or, 2. Its consequences. Of these objects, that which the intention regards may be styled *intentional.* If it regards the act, then the act may be said to be intentional: [71] if the consequences, so also then may the consequences. If it regards both the act and consequences, the whole *action* may be said to be intentional. Whichever of those articles is not the object of the intention, may of course be said to be *unintentional.*

III. *It may regard the act without any of the consequences.* The act may very easily be intentional without the consequences; and often is so. Thus, you may intend to touch a man, without intending to hurt him: and yet, as the consequences turn out, you may chance to hurt him.

IV. —*or the consequences without regarding the act in all its stages.* The consequences of an act may also be intentional, without the act's being intentional throughout; that is, without its being intentional in every stage of it: but this is not so frequent a case as the former. You intend

to hurt a man, suppose, by running against him, and pushing him down: and you run towards him accordingly: but a second man coming in on a sudden between you and the first man, before you can stop yourself, you run against the second man, and by him push down the first.

V. —*but not without regarding the first stage.* But the consequences of an act cannot be intentional, without the act's being itself intentional in at least the first stage. If the act be not intentional in the first stage, it is no act of yours: there is accordingly no intention on your part to produce the consequences: that is to say, the individual consequences. All there can have been on your part is a distant intention to produce other consequences, of the same nature, by some act of yours, at a future time: or else, without any intention, a bare *wish* to see such event take place. The second man, suppose, runs of his own accord against the first, and pushes him down. You had intentions of doing a thing of the same nature: *viz.* To run against him, and push him down yourself; but you had done nothing in pursuance of those intentions: the individual consequences therefore of the act, which the second man performed in pushing down the first, cannot be said to have been on your part intentional.[72]

VI. Second. *A consequence, when intentional, may be directly so, or obliquely.* A consequence, when it is intentional, may either be *directly* so, or only *obliquely*. It may be said to be directly or lineally intentional, when the prospect of producing it constituted one of the links in the chain of causes by which the person was determined to do the act. It may be said to be obliquely or collaterally intentional, when, although the consequence was in contemplation, and appeared likely to ensue in case of the act's being performed, yet the prospect of producing such consequence did not constitute a link in the aforesaid chain.

VII. Third. *When directly, ultimately so, or mediately.* An incident, which is directly intentional, may either be *ultimately* so, or only *mediately*. It may be said to be ultimately intentional, when it stands last of all exterior events in the aforesaid chain of motives; insomuch that the prospect

of the production of such incident, could there be a certainty of its taking place, would be sufficient to determine the will, without the prospect of its producing any other. It may be said to be mediately intentional, and no more, when there is some other incident, the prospect of producing which forms a subsequent link in the same chain: insomuch that the prospect of producing the former would not have operated as a motive, but for the tendency which it seemed to have towards the production of the latter.

VIII. Fourth. *When directly intentional, it may be exclusively so, or inexclusively.* When an incident is directly intentional, it may either be *exclusively* so, or *inexclusively*. It may be said to be exclusively intentional, when no other but that very individual incident would have answered the purpose, insomuch that no other incident had any share in determining the will to the act in question. It may be said to have been inexclusively [73] intentional, when there was some other incident, the prospect of which was acting upon the will at the same time.

IX. Fifth. *When inexclusively, it may be conjunctively, disjunctively, or indiscriminately so.* When an incident is inexclusively intentional, it may be either *con*junctively so, *dis*junctively, or *indiscriminately*. It may be said to be conjunctively intentional with regard to such other incident, when the intention is to produce both: disjunctively, when the intention is to produce either the one or the other indifferently, but not both: indiscriminately, when the intention is indifferently to produce either the one or the other, or both, as it may happen.

X. Sixth. *When disjunctively, it may be with or without preference.* When two incidents are disjunctively intentional, they may be so with or without *preference*. They may be said to be so with preference, when the intention is, that one of them in particular should happen rather than the other: without preference, when the intention is equally fulfilled, whichever of them happens.[74]

XI. *Example.* One example will make all this clear. William II. king of England, being out a stag-hunting, received from Sir Walter Tyrrel a wound, of which he died.[75] Let us

take this case, and diversify it with a variety of suppositions, correspondent to the distinctions just laid down.

1. First then, Tyrrel did not so much as entertain a thought of the king's death; or, if he did, looked upon it as an event of which there was no danger. In either of these cases the incident of his killing the king was altogether unintentional.

2. He saw a stag running that way, and he saw the king riding that way at the same time: what he aimed at was to kill the stag: he did not wish to kill the king: at the same time he saw, that if he shot, it was as likely he should kill the king as the stag: yet for all that he shot, and killed the king accordingly. In this case the incident of his killing the king was intentional, but obliquely so.

3. He killed the king on account of the hatred he bore him, and for no other reason than the pleasure of destroying him. In this case the incident of the king's death was not only directly but ultimately intentional.

4. He killed the king, intending fully so to do; not for any hatred he bore him, but for the sake of plundering him when dead. In this case the incident of the king's death was directly intentional, but not ultimately: it was mediately intentional.

5. He intended neither more nor less than to kill the king. He had no other aim nor wish. In this case it was exclusively as well as directly intentional: exclusively, to wit, with regard to every other material incident.

6. Sir Walter shot the king in the right leg, as he was plucking a thorn out of it with his left hand. His intention was, by shooting the arrow into his leg through his hand, to cripple him in both those limbs at the same time. In this case the incident of the king's being shot in the leg was intentional: and that conjunctively with another which did not happen; *viz.* his being shot in the hand.

7. The intention of Tyrrel was to shoot the king either in the hand or in the leg, but not in both; and rather in the hand than in the leg. In this case the intention of shooting in the hand was disjunctively concurrent, with regard to the other incident, and that with preference.

8. His intention was to shoot the king either in the leg or the hand, whichever might happen: but not in both. In this case the intention was inexclusive, but disjunctively so: yet that, however, without preference.

9. His intention was to shoot the king either in the leg or the hand, or in both, as it might happen. In this case the intention was indiscriminately concurrent, with respect to the two incidents.

XII. *Intentionality of the act with respect to its different* stages, *how far material.* It is to be observed, that an act may be unintentional in any stage or stages of it, though intentional in the preceding: and, on the other hand, it may be intentional in any stage or stages of it, and yet unintentional in the succeeding.[78] But whether it be intentional or no in any preceding stage, is immaterial, with respect to the consequences, so it be unintentional in the last. The only point, with respect to which it is material, is the proof. The more stages the act is unintentional in, the more apparent it will commonly be, that it was unintentional with respect to the last. If a man, intending to strike you on the cheek, strikes you in the eye, and puts it out, it will probably be difficult for him to prove that it was not his intention to strike you in the eye. It will probably be easier, if his intention was really not to strike you, or even not to strike at all.

XIII. *Goodness and badness of intention dismissed.* It is frequent to hear men speak of a good intention, of a bad intention; of the goodness and badness of a man's intention: a circumstance on which great stress is generally laid. It is indeed of no small importance, when properly understood: but the import of it is to the last degree ambiguous and obscure. Strictly speaking, nothing can be said to be good or bad, but either in itself; which is the case only with pain or pleasure: or on account of its effects; which is the case only with things that are the causes or preventives of pain and pleasure. But in a figurative and less proper way of speech, a thing may also be styled good or bad, in consideration of its cause. Now the effects of an intention to do such or such an act, are the same objects which we have

been speaking of under the appellation of its *consequences*: and the causes of intention are called *motives*. A man's intention then on any occasion may be styled good or bad, with reference either to the consequences of the act, or with reference to his motives. If it be deemed good or bad in any sense, it must be either because it is deemed to be productive of good or of bad consequences, or because it is deemed to originate from a good or from a bad motive. But the goodness or badness of the consequences depend upon the circumstances. Now the circumstances are no objects of the intention. A man intends the act: and by his intention produces the act: but as to the circumstances, he does not intend *them*: he does not, inasmuch as they are circumstances of it, produce them. If by accident there be a few which he has been instrumental in producing, it has been by former intentions, directed to former acts, productive of those circumstances as the consequences: at the time in question he takes them as he finds them. Acts, with their consequences, are objects of the will as well as of the understanding: circumstances, as such, are objects of the understanding only. All he can do with these, as such, is to know or not to know them: in other words, to be conscious of them, or not conscious. To the title of Consciousness belongs what is to be said of the goodness or badness of a man's intention, as resulting from the consequences of the act: and to the head of Motives, what is to be said of his intention, as resulting from the motive.

CHAPTER IX.

OF CONSCIOUSNESS.

I. *Connexion of this chapter with the foregoing.* So far with regard to the ways in which the will or intention may be concerned in the production of any incident: we come now to consider the part which the understanding or perceptive faculty may have borne, with relation to such incident.

II. *Acts advised and unadvised: consciousness, what.* A certain act has been done, and that intentionally: that act was attended with certain circumstances: upon these circumstances depended certain of its consequences; and amongst the rest, all those which were of a nature purely physical. Now then, take any one of these circumstances, it is plain, that a man, at the time of doing the act from whence such consequences ensued, may have been either conscious, with respect to this circumstance, or unconscious. In other words, he may either have been aware of the circumstance, or not aware: it may either have been present to his mind, or not present. In the first case, the act may be said to have been an *advised* act, with respect to that circumstance: in the other case, an *unadvised* one.

III. *Unadvisedness may regard either existence, or materiality.* There are two points, with regard to which an act may have been advised or unadvised: 1. The *existence* of the circumstance itself. 2. The *materiality* of it.[77]

IV. *The circumstance may have been present, past, or future.* It is manifest, that with reference to the time of the

act, such circumstance may have been either *present*, *past*, or *future*.

V. *An unadvised act may be heedless, or not heedless.* An act which is unadvised, is either *heedless*, or not heedless. It is termed heedless, when the case is thought to be such, that a person of ordinary prudence,[78] if prompted by an ordinary share of benevolence, would have been likely to have bestowed such and so much attention and reflection upon the material circumstances, as would have effectually disposed him to prevent the mischievous incident from taking place: not heedless, when the case is not thought to be such as above mentioned.[79]

VI. *A mis-advised act, what.—A mis-supposal.* Again. Whether a man did or did not suppose the existence or materiality of a given circumstance, it may be that he *did* suppose the existence and materiality of some circumstance, which either did not exist, or which, though existing, was not material. In such case the act may be said to be *mis-advised*, with respect to such imagined circumstance: and it may be said, that there has been an erroneous supposition, or a *mis-supposal* in the case.

VII. *The supposed circumstance might have been material in the way either of prevention or of compensation.* Now a circumstance, the existence of which is thus erroneously supposed, may be material either, 1. In the way of prevention: or, 2. In that of compensation. It may be said to be material in the way of prevention, when its effect or tendency, had it existed, would have been to prevent the obnoxious consequences: in the way of compensation, when that effect or tendency would have been to produce other consequences, the beneficialness of which would have outweighed the mischievousness of the others.

VIII. *It may have been supposed present, past, or future.* It is manifest that, with reference to the time of the act, such imaginary circumstance may in either case have been supposed either to be *present*, *past*, or *future*.

IX. *Example, continued from the last chapter.* To return to the example exhibited in the preceding chapter.

10. Tyrrel intended to shoot in the direction in which he

shot; but he did not know that the king was riding so near that way. In this case the act he performed in shooting, the act of shooting, was unadvised, with respect to the *existence* of the circumstance of the king's being so near riding that way.

11. He knew that the king was riding that way: but at the distance at which the king was, he knew not of the probability there was that the arrow would reach him. In this case the act was unadvised, with respect to the *materiality* of the circumstance.

12. Somebody had dipped the arrow in poison, without Tyrrel's knowing of it. In this case the act was unadvised, with respect to the existence of a *past* circumstance.

13. At the very instant that Tyrrel drew the bow, the king, being screened from his view by the foliage of some bushes, was riding furiously, in such manner as to meet the arrow in a direct line: which circumstance was also more than Tyrrel knew of. In this case the act was unadvised, with respect to the existence of a *present* circumstance.

14. The king being at a distance from court, could get nobody to dress his wound till the next day; of which circumstance Tyrrel was not aware. In this case the act was unadvised, with respect to what was then a *future* circumstance.

15. Tyrrel knew of the king's being riding that way, of his being so near, and so forth; but being deceived by the foliage of the bushes, he thought he saw a bank between the spot from which he shot, and that to which the king was riding. In this case the act was *mis-advised*, proceeding on the *mis-supposal* of a *preventive* circumstance.

16. Tyrrel knew that every thing was as above, nor was he deceived by the supposition of any preventive circumstance. But he believed the king to be an usurper: and supposed he was coming up to attack a person whom Tyrrel believed to be the rightful king, and who was riding by Tyrrel's side. In this case the act was also mis-advised, but proceeded on the mis-supposal of a *compensative* circumstance.

X. *In what case consciousness extends the intentionality from the act to the consequences.* Let us observe the con-

nexion there is between intentionality and consciousness. When the act itself is intentional, and with respect to the existence of all the circumstances *advised*, as also with respect to the materiality of those circumstances, in relation to a given consequence, and there is no mis-supposal with regard to any preventive circumstance, that consequence must also be intentional: in other words; advisedness, with respect to the circumstances, if clear from the mis-supposal of any preventive circumstance, extends the intentionality from the act to the consequences. Those consequences may be either directly intentional, or only obliquely so: but at any rate they cannot but be intentional.

XI. *Example continued.* To go on with the example. If Tyrrel intended to shoot in the direction in which the king was riding up, and knew that the king was coming to meet the arrow, and knew the probability there was of his being shot in that same part in which he was shot, or in another as dangerous, and with that same degree of force, and so forth, and was not misled by the erroneous supposition of a circumstance by which the shot would have been prevented from taking place, or any such other preventive circumstance, it is plain he could not but have intended the king's death. Perhaps he did not positively wish it; but for all that, in a certain sense he intended it.

XII. *A misadvised act may be rash or not rash.* What heedlessness is in the case of an unadvised act, rashness is in the case of a misadvised one. A misadvised act then may be either rash or not rash. It may be termed rash, when the case is thought to be such, that a person of ordinary prudence, if prompted by an ordinary share of benevolence, would have employed such and so much attention and reflection to the imagined circumstance, as, by discovering to him the non-existence, improbability, or immateriality of it, would have effectually disposed him to prevent the mischievous incident from taking place.

XIII. *The intention may be good or bad in itself, independently of the* motive *as well as the eventual consequences.* In ordinary discourse, when a man does an act of which the consequences prove mischievous, it is a common

thing to speak of him as having acted with a good intention or with a bad intention, of his intention's being a good one or a bad one. The epithets good and bad are all this while applied, we see, to the intention: but the application of them is most commonly governed by a supposition formed with regard to the nature of the motive. The act, though eventually it prove mischievous, is said to be done with a good intention, when it is supposed to issue from a motive which is looked upon as a good motive: with a bad intention, when it is supposed to be the result of a motive which is looked upon as a bad motive. But the nature of the consequences intended, and the nature of the motive which gave birth to the intention, are objects which, though intimately connected, are perfectly distinguishable. The intention might therefore with perfect propriety be styled a good one, whatever were the motive. It might be styled a good one, when not only the consequences of the act *prove* mischievous, but the motive which gave birth to it *was* what is called a bad one. To warrant the speaking of the intention as being a good one, it is sufficient if the consequences of the act, had they proved what to the agent they seemed likely to be, *would* have been of a beneficial nature. And in the same manner the intention may be bad, when not only the consequences of the act prove beneficial, but the motive which gave birth to it was a good one.

XIV. *It is better when the* intention *is meant to be spoken of as being good* or *bad, not to say, the* motive. Now, when a man has a mind to speak of your *intention* as being good or bad, with reference to the consequences, if he speaks of it at all he must use the word intention, for there is no other. But if a man means to speak of the *motive* from which your intention originated, as being a good or a bad one, he is certainly not obliged to use the word intention: it is at least as well to use the word motive. By the supposition he means the motive; and very likely he may *not* mean the intention. For what is true of the one is very often not true of the other. The motive may be good when the intention is bad: the intention may be good when the motive is bad: whether they are both good or both bad, or the one good

and the other bad, makes, as we shall see hereafter, a very essential difference with regard to the consequences.[80] It is therefore much better, when motive is meant, never to say intention.

XV. *Example.* An example will make this clear. Out of malice a man prosecutes you for a crime of which he believes you to be guilty, but of which in fact you are not guilty. Here the *consequences* of his conduct are mischievous: for they are mischievous to you at any rate, in virtue of the shame and anxiety which you are made to suffer while the prosecution is depending: to which is to be added, in case of your being convicted, the evil of the punishment. To you therefore they are mischievous; nor is there any one to whom they are beneficial. The man's *motive* was also what is called a bad one: for malice will be allowed by every body to be a bad motive. However, the *consequences* of his conduct, had they proved such as he believed them likely to be, would have been good: for in them would have been included the punishment of a criminal, which is a benefit to all who are exposed to suffer by a crime of the like nature. The *intention* therefore, in this case, though not in a common way of speaking the motive, might be styled a *good* one. But of motives more particularly in the next chapter.

XVI. *Intention, in what cases it may be innocent.* In the same sense the intention, whether it be positively good or no, so long as it is not bad, may be termed innocent. Accordingly, let the consequences have proved mischievous, and let the motive have been what it will, the intention may be termed innocent in either of two cases: 1. In the case of *un*-advisedness with respect to any of the circumstances on which the mischievousness of the consequences depended: 2. In the case of *mis*-advisedness with respect to any circumstance, which, had it been what it appeared to be, would have served either to prevent or to outweigh the mischief.

XVII. *Intentionality and consciousness, how spoken of in the Roman law.* A few words for the purpose of applying what has been said to the Roman law. Unintentionality, and innocence of intention, seem both to be included in the case of *infortunium*, where there is neither *dolus* nor *culpa*.

Unadvisedness coupled with heedlessness, and mis-advisedness coupled with rashness, correspond to the *culpa sine dolo*. Direct intentionality corresponds to *dolus*. Oblique intentionality seems hardly to have been distinguished from direct; were it to occur, it would probably be deemed also to correspond to *dolus*. The division into *culpa, lata, levis,* and *levissima,* is such as nothing certain can correspond to. What is it that it expresses? A distinction, not in the case itself, but only in the sentiments which any person (a judge, for instance) may find himself disposed to entertain with relation to it: supposing it already distinguished into three subordinate cases by other means.

The word *dolus* seems ill enough contrived: the word *culpa* as indifferently. *Dolus,* upon any other occasion, would be understood to imply deceit, concealment,[81] clandestinity: [82] but here it is extended to open force. *Culpa,* upon any other occasion, would be understood to extend to blame of every kind. It would therefore include *dolus.*[83]

XVIII. *Use of this and the preceding chapter.* The above-mentioned definitions and distinctions are far from being mere matters of speculation. They are capable of the most extensive and constant application, as well to moral discourse as to legislative practice. Upon the degree and bias of a man's intention, upon the absence or presence of consciousness or mis-supposal, depend a great part of the good and bad, more especially of the bad consequences of an act; and on this, as well as other grounds, a great part of the demand for punishment.[84] The presence of intention with regard to such or such a consequence, and of consciousness with regard to such or such a circumstance, of the act, will form so many criminative circumstances,[85] or essential ingredients in the composition of this or that offence: applied to other circumstances, consciousness will form a ground of aggravation, annexable to the like offence.[86] In almost all cases, the absence of intention with regard to certain consequences, and the absence of consciousness, or the presence of mis-supposal, with regard to certain circumstances, will constitute so many grounds of extenuation.[87]

CHAPTER X.

OF MOTIVES.

§ 1. *Different senses of the word motive.*[88]

I. *Motives, why considered.* It is an acknowledged truth, that every kind of act whatever, and consequently every kind of offence, is apt to assume a different character, and be attended with different effects, according to the nature of the *motive* which gives birth to it. This makes it requisite to take a view of the several motives by which human conduct is liable to be influenced.

II. *Purely speculative motives have nothing to do here.* By a motive, in the most extensive sense in which the word is ever used with reference to a thinking being, is meant any thing that can contribute to give birth to, or even to prevent, any kind of action. Now the action of a thinking being is the act either of the body, or only of the mind: and an act of the mind is an act either of the intellectual faculty, or of the will. Acts of the intellectual faculty will sometimes rest in the understanding merely, without exerting any influence in the production of any acts of the will. Motives, which are not of a nature to influence any other acts than those, may be styled purely *speculative* motives, or motives resting in speculation. But as to these acts, neither do they exercise any influence over external acts, or over their consequences, nor consequently over any pain or any pleasure that may be in the number of such consequences. Now it is only on account of their tendency to produce either pain or pleasure, that any acts can be material. With acts, therefore, that rest

purely in the understanding, we have not here any concern: nor therefore with any object, if any such there be, which, in the character of a motive, can have no influence on any other acts than those.

III. *Motives to the will.* The motives with which alone we have any concern, are such as are of a nature to act upon the will. By a motive then, in this sense of the word, is to be understood any thing whatsoever, which, by influencing the will of a sensitive being, is supposed to serve as a means of determining him to act, or voluntarily to forbear to act,[89] upon any occasion. Motives of this sort, in contradistinction to the former, may be styled *practical* motives, or motives applying to practice.

IV. *Figurative and unfigurative senses of the word.* Owing to the poverty and unsettled state of language, the word *motive* is employed indiscriminately to denote two kinds of objects, which, for the better understanding of the subject, it is necessary should be distinguished. On some occasions it is employed to denote any of those really existing incidents from whence the act in question is supposed to take its rise. The sense it bears on these occasions may be styled its literal or *unfigurative* sense. On other occasions it is employed to denote a certain fictitious entity, a passion, an affection of the mind, an ideal being which upon the happening of any such incident is considered as operating upon the mind, and prompting it to take that course, towards which it is impelled by the influence of such incident. Motives of this class are Avarice, Indolence, Benevolence, and so forth; as we shall see more particularly farther on. This latter may be styled the *figurative* sense of the term *motive.*

V. *Motives interior and exterior.* As to the real incidents to which the name of motive is also given, these too are of two very different kinds. They may be either, 1. The *internal* perception of any individual lot of pleasure or pain, the expectation of which is looked upon as calculated to determine you to act in such or such a manner; as the pleasure of acquiring such a sum of money, the pain of exerting yourself on such an occasion, and so forth: or, 2. Any *external* event, the happening whereof is regarded as having

a tendency to bring about the perception of such pleasure or such pain; for instance, the coming up of a lottery ticket, by which the possession of the money devolves to you; or the breaking out of a fire in the house you are in, which makes it necessary for you to quit it. The former kind of motives may be termed interior, or internal: the latter exterior, or external.

VI. *Motive in* prospect—*motive in* esse. Two other senses of the term *motive* need also to be distinguished. Motive refers necessarily to action. It is a pleasure, pain, or other event, that prompts to action. Motive then, in one sense of the word, must be previous to such event. But, for a man to be governed by any motive, he must in every case look beyond that event which is called his action; he must look to the consequences of it: and it is only in this way that the idea of pleasure, of pain, or of any other event, can give birth to it. He must look, therefore, in every case, to some event posterior to the act in contemplation: an event which as yet exists not, but stands only in prospect. Now, as it is in all cases difficult, and in most cases unnecessary, to distinguish between objects so intimately connected, as the posterior possible object which is thus looked forward to, and the present existing object or event which takes place upon a man's looking forward to the other, they are both of them spoken of under the same appellation, *motive*. To distinguish them, the one first mentioned may be termed a motive in *prospect*, the other a motive in *esse*: and under each of these denominations will come as well exterior as internal motives. A fire breaks out in your neighbour's house: you are under apprehension of its extending to your own: you are apprehensive, that if you stay in it, you will be burnt: you accordingly run out of it. This then is the act: the others are all motives to it. The event of the fire's breaking out in your neighbour's house is an external motive, and that in *esse*: the idea or belief of the probability of the fire's extending to your own house, that of your being burnt if you continue, and the pain you feel at the thought of such a catastrophe, are all so many internal events, but still in *esse*: the event of the fire's actually extending to your own house, and that

of your being actually burnt by it, external motives in prospect: the pain you would feel at seeing your house a burning, and the pain you would feel while you yourself were burning, internal motives in prospect: which events, according as the matter turns out, may come to be in *esse:* but then of course they will cease to act as motives.

VII. *Motives immediate and remote.* Of all these motives, which stand nearest to the act, to the production of which they all contribute, is that internal motive in *esse* which consists in the expectation of the internal motive in prospect: the pain or uneasiness you feel at the thoughts of being burnt.[90] All other motives are more or less remote: the motives in prospect, in proportion as the period at which they are expected to happen is more distant from the period at which the act takes place, and consequently later in point of time: the motives in *esse,* in proportion as they also are more distant from that period, and consequently earlier in point of time.[91]

VIII. *Motives to the understanding, how they may influence the will.* It has already been observed, that with motives of which the influence terminates altogether in the understanding, we have nothing here to do. If then, amongst objects that are spoken of as motives with reference to the understanding, there be any which concern us here, it is only in as far as such objects may, through the medium of the understanding, exercise an influence over the will. It is in this way, and in this way only, that any objects, in virtue of any tendency they may have to influence the sentiment of belief, may in a practical sense act in the character of motives. Any objects, by tending to induce a belief concerning the existence, actual, or probable, of a practical motive; that is, concerning the probability of a motive in prospect, or the existence of a motive in *esse;* may exercise an influence on the will, and rank with those other motives that have been placed under the name of practical. The pointing out of motives such as these, is what we frequently mean when we talk of giving *reasons.* Your neighbour's house is on fire as before. I observe to you, that at the lower part of your neighbour's house is some wood-work, which joins

on to yours; that the flames have caught this wood-work, and so forth; which I do in order to dispose you to believe as I believe, that if you stay in your house much longer you will be burnt. In doing this, then, I suggest motives to your understanding; which motives, by the tendency they have to give birth to or strengthen a pain, which operates upon you in the character of an internal motive in *esse*, join their force, and act as motives upon the will.

§ 2. No *motives either constantly good or constantly bad.*

IX. *Nothing can act of itself as a motive but the ideas of pleasure or pain.* In all this chain of motives, the principal or original link seems to be the last internal motive in prospect: it is to this that all the other motives in prospect owe their materiality: and the immediately acting motive its existence. This motive in prospect, we see, is always some pleasure, or some pain; some pleasure, which the act in question is expected to be a means of continuing or producing: some pain which it is expected to be a means of discontinuing or preventing. A motive is substantially nothing more than pleasure or pain, operating in a certain manner.

X. *No sort of motive is in itself a bad one.* Now, pleasure is in *itself* a good: nay, even setting aside immunity from pain, the only good: pain is in itself an evil; and, indeed, without exception, the only evil; or else the words good and evil have no meaning. And this is alike true of every sort of pain, and of every sort of pleasure. It follows, therefore, immediately and incontestibly, that *there is no such thing as any sort of motive that is in itself a bad one.*[92]

XI. *Inaccuracy of expressions in which* good *or* bad *are applied to motives.* It is common, however, to speak of actions as proceeding from *good* or *bad* motives: in which case the motives meant are such as are internal. The expression is far from being an accurate one; and as it is apt to occur in the consideration of almost every kind of offence, it will be requisite to settle the precise meaning of it, and observe how far it quadrates with the truth of things.

XII. *Any sort of motive may give birth to any sort of act.* With respect to goodness and badness, as it is with everything else that is not itself either pain or pleasure, so is it with motives. If they are good or bad, it is only on account of their effects: good, on account of their tendency to produce pleasure, or avert pain: bad, on account of their tendency to produce pain, or avert pleasure. Now the case is, that from one and the same motive, and from every kind of motive, may proceed actions that are good, others that are bad, and others that are indifferent. This we shall proceed to shew with respect to all the different kinds of motives, as determined by the various kinds of pleasures and pains.

XIII. *Difficulties which stand in the way of an analysis of this sort.* Such an analysis, useful as it is, will be found to be a matter of no small difficulty; owing, in great measure, to a certain perversity of structure which prevails more or less throughout all languages. To speak of motives, as of anything else, one must call them by their names. But the misfortune is, that it is rare to meet with a motive of which the name expresses that and nothing more. Commonly along with the very name of the motive, is tacitly involved a proposition imputing to it a certain quality; a quality which, in many cases, will appear to include that very goodness or badness, concerning which we are here inquiring whether, properly speaking, it be or be not imputable to motives. To use the common phrase, in most cases, the name of the motive is a word which is employed either only in a *good sense*, or else only in a *bad sense*. Now, when a word is spoken of as being used in a good sense, all that is necessarily meant is this: that in conjunction with the idea of the object it is put to signify, it conveys an idea of *approbation:* that is, of a pleasure or satisfaction, entertained by the person who employs the term at the thoughts of such object. In like manner, when a word is spoken of as being used in a bad sense, all that is necessarily meant is this: that, in conjunction with the idea of the object it is put to signify, it conveys an idea of *disapprobation:* that is, of a displeasure entertained by the person who employs the term at the thoughts of such object. Now, the circumstance on which

such approbation is grounded will, as naturally as any other, be the opinion of the *goodness* of the object in question, as above explained: such, at least, it must be, upon the principle of utility: so, on the other hand, the circumstance on which any such disapprobation is grounded, will, as naturally as any other, be the opinion of the *badness* of the object: such, at least, it must be, in as far as the principle of utility is taken for the standard.

Now there are certain motives which, unless in a few particular cases, have scarcely any other name to be expressed by but such a word as is used only in a good sense. This is the case, for example, with the motives of piety and honour. The consequence of this is, that if, in speaking of such a motive, a man should have occasion to apply the epithet bad to any actions which he mentions as apt to result from it, he must appear to be guilty of a contradiction in terms. But the names of motives which have scarcely any other name to be expressed by, but such a word as is used only in a bad sense, are many more.[93] This is the case, for example, with the motives of lust and avarice. And accordingly, if in speaking of any such motive, a man should have occasion to apply the epithets good or indifferent to any actions which he mentions as apt to result from it, he must here also appear to be guilty of a similar contradiction.[94]

This perverse association of ideas cannot, it is evident, but throw great difficulties in the way of the inquiry now before us. Confining himself to the language most in use, a man can scarce avoid running, in appearance, into perpetual contradictions. His propositions will appear, on the one hand, repugnant to truth; and on the other hand, adverse to utility. As paradoxes, they will excite contempt: as mischievous paradoxes, indignation. For the truths he labours to convey, however important, and however salutary, his reader is never the better: and he himself is much the worse. To obviate this inconvenience, completely, he has but this one unpleasant remedy; to lay aside the old phraseology and invent a new one. Happy the man whose language is ductile enough to permit him this resource. To palliate the inconvenience, where that method of obviating it is impracticable, he has

nothing left for it but to enter into a long discussion, to state the whole matter at large, to confess, that for the sake of promoting the purposes, he has violated the established laws of language, and to throw himself upon the mercy of his readers.[95]

§ 3. *Catalogue of motives corresponding to that of Pleasures and Pains.*

XIV. *Physical desire corresponding to pleasures of sense in general.* From the pleasures of the senses, considered in the gross, results the motive which, in a neutral sense, may be termed physical desire: in a bad sense, it is termed sensuality. Name used in a good sense it has none. Of this, nothing can be determined, till it be considered separately, with reference to the several species of pleasures to which it corresponds.

XV. *The motive corresponding to the pleasures of the palate.* In particular, then, to the pleasures of the taste or palate corresponds a motive, which in a neutral sense having received no name that can serve to express it in all cases, can only be termed, by circumlocution, the love of the pleasures of the palate. In particular cases it is styled hunger: in others, thirst.[96] The love of good cheer expresses this motive, but seems to go beyond: intimating, that the pleasure is to be partaken of in company, and involving a kind of sympathy. In a bad sense, it is styled in some cases greediness, voraciousness, gluttony: in others, principally when applied to children, lickerishness. It may in some cases also be represented by the word daintiness. Name used in a good sense it has none. 1. A boy, who does not want for victuals, steals a cake out of a pastry-cook's shop, and eats it. In this case his motive will be universally deemed a bad one: and if it be asked what it is, it may be answered, perhaps, lickerishness. 2. A boy buys a cake out of a pastry-cook's shop, and eats it. In this case his motive can scarcely be looked upon as either good or bad, unless his master should be out of humour with him; and then perhaps he may call it lickerishness, as before. In both cases, however, his motive is the

same. It is neither more nor less than the motive corresponding to the pleasures of the palate.[97]

XVI. *Sexual desires corresponding to the pleasure of the sexual sense.* To the pleasures of the sexual sense corresponds the motive which, in a neutral sense, may be termed sexual desire. In a bad sense, it is spoken of under the name of lasciviousness, and a variety of other names of reprobation. Name used in a good sense it has none.[98]

1. A man ravishes a virgin. In this case the motive is, without scruple, termed by the name of lust, lasciviousness, and so forth; and is universally looked upon as a bad one. 2. The same man, at another time, exercises the rights of marriage with his wife. In this case the motive is accounted, perhaps, a good one, or at least indifferent: and here people would scruple to call it by any of those names. In both cases, however, the motive may be precisely the same. In both cases it may be neither more nor less than sexual desire.

XVII. *Curiosity, &c. corresponding to the pleasures of curiosity.* To the pleasures of curiosity corresponds the motive known by the same name: and which may be otherwise called the love of novelty, or the love of experiment; and, on particular occasions, sport, and sometimes play.

1. A boy, in order to divert himself, reads an improving book: the motive is accounted, perhaps, a good one: at any rate not a bad one. 2. He sets his top a spinning: the motive is deemed, at any rate, not a bad one. 3. He sets loose a mad ox among a crowd; his motive is now, perhaps, termed an abominable one. Yet in all three cases the motive may be the very same: it may be neither more nor less than curiosity.

XVIII. *None to pleasures of sense.* As to the other pleasures of sense they are of too little consequence to have given any separate denominations to the corresponding motives.

XIX. *Pecuniary interest to the pleasures of wealth.* To the pleasures of wealth corresponds the sort of motive which, in a neutral sense, may be termed pecuniary interest: in a bad sense, it is termed, in some cases, avarice, covetousness, rapacity, or lucre: in other cases, niggardliness: in a good sense, but only in particular cases, economy and frugality; and in

some cases the word industry may be applied to it: in a sense nearly indifferent, but rather bad than otherwise, it is styled, though only in particular cases, parsimony.

1. For money you gratify a man's hatred, by putting his adversary to death. 2. For money you plough his field for him.—In the first case your motive is termed lucre, and is accounted corrupt and abominable: and in the second, for want of a proper appellation, it is styled industry; and is looked upon as innocent at least, if not meritorious. Yet the motive is in both cases precisely the same: it is neither more nor less than pecuniary interest.

XX. *None to the pleasures of skill.* The pleasures of skill are neither distinct enough, nor of consequence enough, to have given any name to the corresponding motive.

XXI. *To the pleasures of amity the desire of ingratiating one's self.* To the pleasures of amity corresponds a motive which, in a neutral sense, may be termed the desire of ingratiating one's self. In a bad sense it is in certain cases styled servility: in a good sense it has no name that is peculiar to it: in the cases in which it has been looked on with a favourable eye, it has seldom been distinguished from the motive of sympathy or benevolence, with which, in such cases, it is commonly associated.

1. To acquire the affections of a woman before marriage, to preserve them afterwards, you do every thing, that is consistent with other duties, to make her happy: in this case your motive is looked upon as laudable, though there is no name for it. 2. For the same purpose, you poison a woman with whom she is at enmity: in this case your motive is looked upon as abominable, though still there is no name for it. 3. To acquire or preserve the favour of a man who is richer or more powerful than yourself, you make yourself subservient to his pleasures. Let them even be lawful pleasures, if people choose to attribute your behaviour to this motive, you will not get them to find any other name for it than servility. Yet in all three cases the motive is the same: it is neither more nor less than the desire of ingratiating yourself.

XXII. *To the pleasures of a good name, the love of repu-*

tation. To the pleasures of the moral sanction, or, as they may otherwise be called, the pleasures of a good name, corresponds a motive which, in a neutral sense, has scarcely yet obtained any adequate appellative. It may be styled, the love of reputation. It is nearly related to the motive last preceding: being neither more nor less than the desire of ingratiating one's self with, or, as in this case we should rather say, of recommending one's self to, the world at large. In a good sense, it is termed honour, or the sense of honour: or rather, the word honour is introduced somehow or other upon the occasion of its being brought to view: for in strictness the word honour is put rather to signify that imaginary object, which a man is spoken of as possessing upon the occasion of his obtaining a conspicuous share of the pleasures that are in question. In particular cases, it is styled the love of glory. In a bad sense, it is styled, in some cases, false honour; in others, pride; in others, vanity. In a sense not decidedly bad, but rather bad than otherwise, ambition. In an indifferent sense, in some cases, the love of fame: in others, the sense of shame. And, as the pleasures belonging to the moral sanction run undistinguishably into the pains derived from the same source,[99] it may also be styled, in some cases, the fear of dishonour, the fear of disgrace, the fear of infamy, the fear of ignominy, or the fear of shame.

1. You have received an affront from a man: according to the custom of the country, in order, on the one hand, to save yourself from the shame of being thought to bear it patiently;[100] on the other hand, to obtain the reputation of courage; you challenge him to fight with mortal weapons. In this case your motive will by some people be accounted laudable, and styled honour: by others it will be accounted blameable, and these, if they call it honour, will prefix an epithet of improbation to it, and call it false honour. 2. In order to obtain a post of rank and dignity, and thereby to increase the respects paid you by the public, you bribe the electors who are to confer it, or the judge before whom the title to it is in dispute. In this case your motive is commonly accounted corrupt and abominable, and is styled, perhaps, by some such name as dishonest or corrupt ambi-

tion, as there is no single name for it. 3. In order to obtain the good-will of the public, you bestow a large sum in works of private charity or public utility. In this case people will be apt not to agree about your motive. Your enemies will put a bad colour upon it, and call it ostentation: your friends, to save you from this reproach, will choose to impute your conduct not to this motive but to some other: such as that of charity (the denomination in this case given to private sympathy) or that of public spirit. 4. A king, for the sake of gaining the admiration annexed to the name of conqueror (we will suppose power and resentment out of the question) engages his kingdom in a bloody war. His motive, by the multitude (whose sympathy for millions is easily overborne by the pleasure which their imagination finds in gaping at any novelty they observe in the conduct of a single person) is deemed an admirable one. Men of feeling and reflection, who disapprove of the dominion exercised by this motive on this occasion, without always perceiving that it is the same motive which in other instances meets with their approbation, deem it an abominable one; and because the multitude, who are the manufacturers of language, have not given them a simple name to call it by, they will call it by some such compound name as the love of false glory or false ambition. Yet in all four cases the motive is the same: it is neither more nor less than the love of reputation.

XXIII. *To the pleasures of power, the love of power.* To the pleasures of power corresponds the motive which, in a neutral sense, may be termed the love of power. People, who are out of humour with it sometimes, call it the lust of power. In a good sense, it is scarcely provided with a name. In certain cases this motive, as well as the love of reputation, are confounded under the same name, ambition. This is not to be wondered at, considering the intimate connexion there is between the two motives in many cases: since it commonly happens, that the same object which affords the one sort of pleasure, affords the other sort at the same time: for instance, offices, which are at once posts of honour and places of trust: and since at any rate reputation is the road to power.

1. If, in order to gain a place in administration, you poison the man who occupies it. 2. If, in the same view, your propose a salutary plan for the advancement of the public welfare: your motive is in both cases the same. Yet in the first case it is accounted criminal and abominable: in the second case allowable, and even laudable.

XXIV. *The motive belonging to the religious sanction.* To the pleasures as well as to the pains of the religious sanction corresponds a motive which has, strictly speaking, no perfectly neutral name applicable to all cases, unless the word religion be admitted in this character: though the word religion, strictly speaking, seems to mean not so much the motive itself, as a kind of fictitious personage, by whom the motive is supposed to be created, or an assemblage of acts supposed to be dictated by that personage: nor does it seem to be completely settled into a neutral sense. In the same sense it is also, in some cases, styled religious zeal: in other cases, the fear of God. The love of God, though commonly contrasted with the fear of God, does not come strictly under this head. It coincides properly with a motive of a different denomination; viz. a kind of sympathy or good-will, which has the Deity for its object. In a good sense, it is styled devotion, piety, and pious zeal. In a bad sense, it is styled, in some cases, superstition, or superstitious zeal: in other cases, fanaticism, or fanatic zeal: in a sense not decidedly bad, because not appropriated to this motive, enthusiasm, or enthusiastic zeal.

1. In order to obtain the favour of the Supreme Being, a man assassinates his lawful sovereign. In this case the motive is now almost universally looked upon as abominable, and is termed fanaticism: formerly it was by great numbers accounted laudable, and was by them called pious zeal. 2. In the same view, a man lashes himself with thongs. In this case, in yonder house, the motive is accounted laudable, and is called pious zeal: in the next house it is deemed contemptible, and called superstition. 3. In the same view, a man eats a piece of bread (or at least what to external appearance is a piece of bread) with certain ceremonies. In this case, in yonder house, his motive is looked upon as

laudable, and is styled piety and devotion: in the next house it is deemed abominable, and styled superstition, as before: perhaps even it is absurdly styled impiety. 4. In the same view, a man holds a cow by the tail while he is dying. On the Thames the motive would in this case be deemed contemptible, and called superstition. On the Ganges it is deemed meritorious, and called piety. 5. In the same view, a man bestows a large sum in works of charity, or public utility. In this case the motive is styled laudable, by those at least to whom the works in question appear to come under this description: and by these at least it would be styled piety. Yet in all these cases the motive is precisely the same: it is neither more nor less than the motive belonging to the religious sanction.[101]

XXV. *Good-will, &c. to the pleasures of sympathy.* To the pleasures of sympathy corresponds the motive which, in a neutral sense, is termed good-will. The word sympathy may also be used on this occasion: though the sense of it seems to be rather more extensive. In a good sense, it is styled benevolence: and in certain cases, philanthropy; and, in a figurative way, brotherly love; in others, humanity; in others, charity; in others, pity and compassion; in others, mercy; in others, gratitude; in others, tenderness; in others, patriotism; in others, public spirit. Love is also employed in this as in so many other senses. In a bad sense, it has no name applicable to it in all cases: in particular cases it is styled partiality. The word zeal, with certain epithets prefixed to it, might also be employed sometimes on this occasion, though the sense of it be more extensive; applying sometimes to ill as well as to good will. It is thus we speak of party zeal, national zeal, and public zeal. The word attachment is also used with the like epithets: we also say family-attachment. The French expression, *l'esprit de corps*, for which as yet there seems to be scarcely any name in English, might be rendered, in some cases, though rather inadequately, by the terms corporation spirit, corporation attachment, or corporation zeal.

1. A man who has set a town on fire is apprehended and committed: out of regard or compassion for him, you help him to break prison. In this case the generality of people will

probably scarcely know whether to condemn your motive or to applaud it: those who condemn your conduct, will be disposed rather to impute it to some other motive: if they style it benevolence or compassion, they will be for prefixing an epithet, and calling it false benevolence or false compassion.[102] 2. The man is taken again, and is put upon his trial: to save him you swear falsely in his favour. People, who would not call your motive a bad one before, will perhaps call it so now. 3. A man is at law with you about an estate: he has no right to it: the judge knows this, yet, having an esteem or affection for your adversary, adjudges it to him. In this case the motive is by every body deemed abominable, and is termed injustice and partiality. 4. You detect a statesman in receiving bribes: out of regard to the public interest, you give information of it, and prosecute him. In this case, by all who acknowledge your conduct to have originated from this motive, your motive will be deemed a laudable one, and styled public spirit. But his friends and adherents will not choose to account for your conduct in any such manner: they will rather attribute it to party enmity. 5. You find a man on the point of starving: you relieve him; and save his life. In this case your motive will by every body be accounted laudable, and it will be termed compassion, pity, charity, benevolence. Yet in all these cases the motive is the same: it is neither more nor less than the motive of good-will.

XXVI. *Ill-will, &c. to the pleasures of antipathy.* To the pleasures of malevolence, or antipathy, corresponds the motive which, in a neutral sense, is termed antipathy or displeasure: and, in particular cases, dislike, aversion, abhorrence, and indignation: in a neutral sense, or perhaps a sense leaning a little to the bad side, ill-will: and, in particular cases, anger, wrath, and enmity. In a bad sense it is styled, in different cases, wrath, spleen, ill-humour, hatred, malice, rancour, rage, fury, cruelty, tyranny, envy, jealousy, revenge, misanthropy, and by other names, which it is hardly worth while to endeavour to collect.[103] Like good-will, it is used with epithets expressive of the persons who are the objects of the affection. Hence we hear of party enmity, party rage, and so forth. In a good sense there seems to be no single name for it.

In compound expressions it may be spoken of in such a sense, by epithets, such as *just* and *laudable*, prefixed to words that are used in a neutral or nearly neutral sense.

1. You rob a man: he prosecutes you, and gets you punished: out of resentment you set upon him, and hang him with your own hands. In this case your motive will universally be deemed detestable, and will be called malice, cruelty, revenge, and so forth. 2. A man has stolen a little money from you: out of resentment you prosecute him, and get him hanged by course of law. In this case people will probably be a little divided in their opinions about your motive: your friends will deem it a laudable one, and call it a just or laudable resentment: your enemies will perhaps be disposed to deem it blameable, and call it cruelty, malice, revenge, and so forth: to obviate which, your friends will try perhaps to change the motive, and call it public spirit. 3. A man has murdered your father: out of resentment you prosecute him, and get him put to death in course of law. In this case your motive will be universally deemed a laudable one, and styled, as before, a just or laudable resentment: and your friends, in order to bring forward the more amiable principle from which the malevolent one, which was your immediate motive, took its rise, will be for keeping the latter out of sight, speaking of the former only, under some such name as filial piety. Yet in all these cases the motive is the same: it is neither more nor less than the motive of ill-will.

XXVII. *Self-preservation, to the several kinds of pains.* To the several sorts of pains, or at least to all such of them as are conceived to subsist in an intense degree, and to death, which, as far as we can perceive, is the termination of all the pleasures, as well as all the pains we are acquainted with, corresponds the motive, which in a neutral sense is styled, in general, self-preservation: the desire of preserving one's self from the pain or evil in question. Now in many instances the desire of pleasure, and the sense of pain, run into one another undistinguishably. Self-preservation, therefore, where the degree of the pain which it corresponds to is but slight will scarcely be distinguishable, by any precise line, from the motives corresponding to the several sorts of pleasures. Thus in

the case of the pains of hunger and thirst: physical want will in many cases be scarcely distinguishable from physical desire. In some cases it is styled, still in a neutral sense, self-defence. Between the pleasures and the pains of the moral and religious sanctions, and consequently of the motives that correspond to them, as likewise between the pleasures of amity, and the pains of enmity, this want of boundaries has already been taken notice of.[104] The case is the same between the pleasures of wealth, and the pains of privation corresponding to those pleasures. There are many cases, therefore, in which it will be difficult to distinguish the motive of self-preservation from pecuniary interest, from the desire of ingratiating one's self, from the love of reputation, and from religious hope: in which cases, those more specific and explicit names will naturally be preferred to this general and inexplicit one. There are also a multitude of compound names, which either are already in use, or might be devised, to distinguish the specific branches of the motive of self-preservation from those several motives of a pleasurable origin: such as the fear of poverty, the fear of losing such or such a man's regard, the fear of shame, and the fear of God. Moreover, to the evil of death corresponds, in a neutral sense, the love of life; in a bad sense, cowardice: which corresponds also to the pains of the senses, at least when considered as subsisting in an acute degree. There seems to be no name for the love of life that has a good sense; unless it be the vague and general name of prudence.

1. To save yourself from being hanged, pilloried, imprisoned, or fined, you poison the only person who can give evidence against you. In this case your motive will universally be styled abominable: but as the term self-preservation has no bad sense, people will not care to make this use of it: they will be apt rather to change the motive, and call it malice. 2. A woman, having been just delivered of an illegitimate child, in order to save herself from shame, destroys the child, or abandons it. In this case, also, people will call the motive a bad one, and, not caring to speak of it under a neutral name, they will be apt to change the motive, and call it by some such name as cruelty. 3. To save the expense of a halfpenny, you suffer a

man, whom you could preserve at that expense, to perish with want, before your eyes. In this case your motive will be universally deemed an abominable one; and, to avoid calling it by so indulgent a name as self-preservation, people will be apt to call it avarice and niggardliness, with which indeed in this case it indistinguishably coincides: for the sake of finding a more reproachful appellation, they will be apt likewise to change the motive, and term it cruelty. 4. To put an end to the pain of hunger, you steal a loaf of bread. In this case your motive will scarcely, perhaps, be deemed a very bad one; and, in order to express more indulgence for it, people will be apt to find a stronger name for it than self-preservation, terming it *necessity*. 5. To save yourself from drowning, you beat off an innocent man who has got hold of the same plank. In this case your motive will in general be deemed neither good nor bad, and it will be termed self-preservation, or necessity, or the love of life. 6. To save your life from a gang of robbers, you kill them in the conflict. In this case the motive may, perhaps, be deemed rather laudable than otherwise, and, besides self-preservation, is styled also self-defence. 7. A soldier is sent out upon a party against a weaker party of the enemy: before he gets up with them, to save his life, he runs away. In this case the motive will universally be deemed a contemptible one, and will be called cowardice. Yet in all these various cases, the motive is still the same. It is neither more nor less than self-preservation.

XXVIII. *To the pains of exertion, the love of ease.* In particular, to the pains of exertion corresponds the motive, which, in a neutral sense, may be termed the love of ease, or by a longer circumlocution, the desire of avoiding trouble. In a bad sense, it is termed indolence.[105] It seems to have no name that carries with it a good sense.

1. To save the trouble of taking care of it, a parent leaves his child to perish. In this case the motive will be deemed an abominable one, and, because indolence will seem too mild a name for it, the motive will, perhaps, be changed, and spoken of under some such term as cruelty. 2. To save yourself from an illegal slavery, you make your escape. In this case the motive will be deemed certainly not a bad one: and, because

indolence, or even the love of ease, will be thought too unfavourable a name for it, it will, perhaps, be styled the love of liberty. 3. A mechanic, in order to save his labour, makes an improvement in his machinery. In this case, people will look upon his motive as a good one; and finding no name for it that carries a good sense, they will be disposed to keep the motive out of sight: they will speak rather of his ingenuity, than of the motive which was the means of his manifesting that quality. Yet in all these cases the motive is the same: it is neither more nor less than the love of ease.

XXIX. *Motives can only be bad with reference to the most frequent complexion of their effects.* It appears then that there is no such thing as any sort of motive which is a bad one in itself: nor, consequently, any such thing as a sort of motive, which in itself is exclusively a good one. And as to their effects, it appears too that these are sometimes bad, at other times either indifferent or good: and this appears to be the case with every sort of motive. *If any sort of motive than is either good or bad on the score of its effects, this is the case only on individual occasions, and with individual motives;* and this is the case with one sort of motive as well as with another. *If any sort of motive then can, in consideration of its effects, be termed with any propriety a bad one,* it can only be with reference to the balance of all the effects it may have had of both kinds within a given period, that is, of its most usual tendency.

XXX. *How it is that motives, such as lust, avarice, &c. are constantly bad.* What then? (it will be said) are not lust, cruelty, avarice, bad motives? Is there so much as any one individual occasion, in which motives like these can be otherwise than bad? No, certainly: and yet the proposition, that there is no one *sort* of motive but what will on many occasions be a good one, is nevertheless true. The fact is, that these are names which, if properly applied, are never applied but in the cases where the motives they signify happen to be bad. The names of these motives, considered apart from their effects, are sexual desire, displeasure, and pecuniary interest. To sexual desire, when the effects of it are looked upon as bad, is given the name of lust. Now lust is always a bad motive.

Why? Because if the case be such, that the effects of the motive are not bad, it does not go, or at least ought not to go, by the name of lust. The case is, then, that when I say, 'Lust is a bad motive,' it is a proposition that merely concerns the import of the word lust; and which would be false if transferred to the other word used for the same motive, sexual desire. Hence we see the emptiness of all those rhapsodies of common-place morality, which consist in the taking of such names as lust, cruelty, and avarice, and branding them with marks of reprobation: applied to the *thing*, they are false; applied to the *name*, they are true indeed, but nugatory. Would you do a real service to mankind, show them the cases in which sexual desire *merits* the name of lust; displeasure, that of cruelty; and pecuniary interest, that of avarice.

XXXI. *Under the above restrictions, motives may be distinguished into good, bad, and indifferent or neutral.* If it were necessary to apply such denominations as good, bad, and indifferent to motives, they might be classed in the following manner, in consideration of the most frequent complexion of their effects. In the class of good motives might be placed the articles of, 1. Good-will. 2. Love of reputation. 3. Desire of amity. And, 4. Religion. In the class of bad motives, 5. Displeasure. In the class of neutral or indifferent motives, 6. Physical desire. 7. Pecuniary interest. 8. Love of power. 9. Self-preservation; as including the fear of the pains of the senses, the love of ease, and the love of life.

XXXII. *Inconveniences of this distribution.* This method of arrangement, however, cannot but be imperfect; and the nomenclature belonging to it is in danger of being fallacious. For by what method of investigation can a man be assured, that with regard to the motives ranked under the name of good, the good effects they have had, from the beginning of the world, have, in each of the four species comprised under this name, been superior to the bad? still more difficulty would a man find in assuring himself, that with regard to those which are ranked under the name of neutral or indifferent, the effects they have had have exactly balanced each other, the value of the good being neither greater nor less than that of the bad. It is to be considered, that the interests

of the person himself can no more be left out of the estimate, than those of the rest of the community. For what would become of the species, if it were not for the motives of hunger and thirst, sexual desire, the fear of pain, and the love of life? Nor in the actual constitution of human nature is the motive of displeasure less necessary, perhaps, than any of the others: although a system, in which the business of life might be carried on without it, might possibly be conceived. It seems, therefore, that they could scarcely, without great danger of mistakes, be distinguished in this manner even with reference to each other.

XXXIII. *It is only in individual instances that motives can be good or bad.* The only way, it should seem, in which a motive can with safety and propriety be styled good or bad, is with reference to its effects in each individual instance; and principally from the intention it gives birth to: from which arise, as will be shown hereafter, the most material part of its effects. A motive is good, when the intention it gives birth to is a good one; bad, when the intention is a bad one: and an intention is good or bad, according to the material consequences that are the objects of it. So far is it from the goodness of the intention's being to be known only from the species of the motive. But from one and the same motive, as we have seen, may result intentions of every sort of complexion whatsoever. This circumstance, therefore, can afford no clue for the arrangement of the several sorts of motives.

XXXIV. *Motives distinguished into social, dissocial, and self-regarding.* A more commodious method, therefore, it should seem, would be to distribute them according to the influence which they appear to have on the interests of the other members of the community, laying those of the party himself out of the question: to wit, according to the tendency which they appear to have to unite, or disunite, his interests and theirs. On this plan they may be distinguished into *social*, *dissocial*, and *self-regarding*. In the social class may be reckoned, 1. Good-will. 2. Love of reputation. 3. Desire of amity. 4. Religion. In the dissocial may be placed, 5. Displeasure. In the self-regarding class, 6. Physical desire. 7. Pecuniary interest. 8. Love of power. 9. Self-preservation; as

including the fear of the pains of the senses, the love of ease, and the love of life.

XXXV. *—social, into purely-social, and semi-social.* With respect to the motives that have been termed social, if any farther distinction should be of use, to that of good-will alone may be applied the epithet of *purely-social;* while the love of reputation, the desire of amity, and the motive of religion, may together be comprised under the division of *semi-social:* the social tendency being much more constant and unequivocal in the former than in any of the three latter. Indeed these last, social as they may be termed, are self-regarding at the same time.[106]

§ 4. *Order of pre-eminence among motives.*

XXXVI. *The dictates of good-will are the surest of coinciding with those of utility.* Of all these sorts of motives, good-will is that of which the dictates,[107] taken in a general view, are surest of coinciding with those of the principle of utility. For the dictates of utility are neither more nor less than the dictates of the most extensive [108] and enlightened (that is *well-advised* [109]) benevolence. The dictates of the other motives may be conformable to those of utility, or repugnant, as it may happen.

XXXVII. *Yet do not in all cases.* In this, however, it is taken for granted, that in the case in question the dictates of benevolence are not contradicted by those of a more extensive, that is enlarged, benevolence. Now when the dictates of benevolence, as respecting the interests of a certain set of persons, are repugnant to the dictates of the same motive, as respecting the more important [110] interests of another set of persons, the former dictates, it is evident, are repealed, as it were, by the latter: and a man, were he to be governed by the former, could scarcely, with propriety, be said to be governed by the dictates of benevolence. On this account, were the motives on both sides sure to be alike present to a man's mind, the case of such a repugnancy would hardly be worth distinguishing, since the partial benevolence might be considered as swallowed up in the more extensive: if the former

prevailed, and governed the action, it must be considered as not owing its birth to benevolence, but to some other motive: if the latter prevailed, the former might be considered as having no effect. But the case is, that a partial benevolence may govern the action, without entering into any direct competition with the more extensive benevolence, which would forbid it; because the interests of the less numerous assemblage of persons may be present to a man's mind, at a time when those of the more numerous are either not present, or, if present, make no impression. It is in this way that the dictates of this motive may be repugnant to utility, yet still be the dictates of benevolence. What makes those of private benevolence conformable upon the whole to the principle of utility, is, that in general they stand unopposed by those of public: if they are repugnant to them, it is only by accident. What makes them the more conformable, is, that in a civilized society, in most of the cases in which they would of themselves be apt to run counter to those of public benevolence, they find themselves opposed by stronger motives of the self-regarding class, which are played off against them by the laws; and that it is only in cases where they stand unopposed by the other more salutary dictates, that they are left free. An act of injustice or cruelty, committed by a man for the sake of his father or his son, is punished, and with reason, as much as if it were committed for his own.

XXXVIII. *Next to them come those of the love of reputation.* After good-will, the motive of which the dictates seem to have the next best chance for coinciding with those of utility, is that of the love of reputation. There is but one circumstance which prevents the dictates of this motive from coinciding in all cases with those of the former. This is, that men in their likings and dislikings, in the dispositions they manifest to annex to any mode of conduct their approbation or their disapprobation, and in consequence to the person who appears to practise it, their good or their ill will, do not govern themselves exclusively by the principle of utility. Sometimes it is the principle of asceticism they are guided by: sometimes the principle of sympathy and antipathy. There is another circumstance, which diminishes, not their conformity

to the principle of utility, but only their efficacy in comparison with the dictates of the motive of benevolence. The dictates of this motive will operate as strongly in secret as in public: whether it appears likely that the conduct which they recommend will be known or not: those of the love of reputation will coincide with those of benevolence only in proportion as a man's conduct seems likely to be known. This circumstance, however, does not make so much difference as at first sight might appear. Acts, in proportion as they are material, are apt to become known: [111] and in point of reputation, the slightest suspicion often serves for proof. Besides, if an act be a disreputable one, it is not any assurance a man can have of the secrecy of the particular act in question, that will of course surmount the objections he may have against engaging in it. Though the act in question should remain secret, it will go towards forming a habit, which may give birth to other acts, that may not meet with the same good fortune. There is no human being, perhaps, who is at years of discretion, on whom considerations of this sort have not some weight: and they have the more weight upon a man, in proportion to the strength of his intellectual powers, and the firmness of his mind.[112] Add to this, the influence which habit itself, when once formed, has in restraining a man from acts towards which, from the view of the disrepute annexed to them, as well as from any other cause, he has contracted an aversion. The influence of habit, in such cases, is a matter of fact, which, though not readily accounted for, is acknowledged and indubitable.[113]

XXXIX. *Next those of the desire of amity.* After the dictates of the love of reputation come, as it should seem, those of the desire of amity. The former are disposed to coincide with those of utility, inasmuch as they are disposed to coincide with those of benevolence. Now those of the desire of amity are apt also to coincide, in a certain sort, with those of benevolence. But the sort of benevolence with the dictates of which the love of reputation coincides, is the more extensive; that with which those of the desire of amity coincide, the less extensive. Those of the love of amity have still, however, the advantage of those of the self-regarding motives. The former,

at one period or other of his life, dispose a man to contribute to the happiness of a considerable number of persons: the latter, from the beginning of life to the end of it, confine themselves to the care of that single individual. The dictates of the desire of amity, it is plain, will approach nearer to a coincidence with those of the love of reputation, and thence with those of utility, in proportion, *cæteris paribus*, to the number of the persons whose amity a man has occasion to desire: and hence it is, for example, that an English member of parliament, with all his own weaknesses, and all the follies of the people whose amity he has to cultivate, is probably, in general, a better character than the secretary of a visier at Constantinople, or of a naïb in Indostan.

XL. *Difficulty of placing those of religion.* The dictates of religion are, under the infinite diversity of religions, so extremely variable, that it is difficult to know what general account to give of them, or in what rank to place the motive they belong to. Upon the mention of religion, people's first thoughts turn naturally to the religion they themselves profess. This is a great source of miscalculation, and has a tendency to place this sort of motive in a higher rank than it deserves. The dictates of religion would coincide, in all cases, with those of utility, were the Being, who is the object of religion, universally supposed to be as benevolent as he is supposed to be wise and powerful; and were the notions entertained of his benevolence, at the same time, as correct as those which are entertained of his wisdom and his power. Unhappily, however, neither of these is the case. He is universally supposed to be all-powerful: for by the Deity, what else does any man mean than the Being, whatever he be, by whom every thing is done? And as to knowledge, by the same rule that he should know one thing he should know another. These notions seem to be as correct, for all material purposes, as they are universal. But among the votaries of religion (of which number the multifarious fraternity of Christians is but a small part) there seem to be but few (I will not say how few) who are real believers in his benevolence. They call him benevolent in words, but they do not mean that he is so in reality. They do not mean, that he is benevolent as man

is conceived to be benevolent: they do not mean that he is benevolent in the only sense in which benevolence has a meaning. For if they did, they would recognise that the dictates of religion could be neither more nor less than the dictates of utility: not a tittle different: not a tittle less or more. But the case is, that on a thousand occasions they turn their backs on the principle of utility. They go astray after the strange principles its antagonists: sometimes it is the principle of asceticism: sometimes the principle of sympathy and antipathy.[114] Accordingly, the idea they bear in their minds, on such occasions, is but too often the idea of malevolence; to which idea, stripping it of its own proper name, they bestow the specious appellation of the social motive.[115] The dictates of religion, in short, are no other than the dictates of that principle which has been already mentioned under the name of the theological principle.[116] These, as has been observed, are just as it may happen, according to the biases of the person in question, copies of the dictates of one or other of the three original principles: sometimes, indeed, of the dictates of utility: but frequently of those of asceticism, or those of sympathy and antipathy. In this respect they are only on a par with the dictates of the love of reputation: in another they are below it. The dictates of religion are in all places intermixed more or less with dictates unconformable to those of utility, deduced from texts, well or ill interpreted, of the writings held for sacred by each sect: unconformable, by imposing practices sometimes inconvenient to a man's self, sometimes pernicious to the rest of the community. The sufferings of uncalled martyrs, the calamities of holy wars and religious persecutions, the mischiefs of intolerant laws, (objects which can here only be glanced at, not detailed) are so many additional mischiefs over and above the number of those which were ever brought into the world by the love of reputation. On the other hand, it is manifest, that with respect to the power of operating in secret, the dictates of religion have the same advantage over those of the love of reputation, and the desire of amity, as is possessed by the dictates of benevolence.

XLI. *Tendency they have to improve.* Happily, the dictates of religion seem to approach nearer and nearer to a co-

incidence with those of utility every day. But why? Because the dictates of the moral sanction do so: and those coincide with or are influenced by these. Men of the worst religions, influenced by the voice and practice of the surrounding world, borrow continually a new and a new leaf out of the book of utility: and with these, in order not to break with their religion, they endeavour, sometimes with violence enough, to patch together and adorn the repositories of their faith.

XLII. *Afterwards come the self-regarding motives: and, lastly, that of displeasure.* As to the self-regarding and dissocial motives, the order that takes place among these, and the preceding one, in point of extra-regarding influence, is too evident to need insisting on. As to the order that takes place among the motives of the self-regarding class, considered in comparison with one another, there seems to be no difference which on this occasion would be worth mentioning. With respect to the dissocial motive, it makes a difference (with regard to its extra-regarding effects) from which of two sources it originates; whether from self-regarding or from social considerations. The displeasure you conceive against a man may be founded either on some act which offends you in the first instance, or on an act which offends you no otherwise than because you look upon it as being prejudicial to some other party on whose behalf you interest yourself: which other party may be of course either a determinate individual, or any assemblage of individuals, determinate or indeterminate.[117] It is obvious enough, that a motive, though in itself dissocial, may, by issuing from a social origin, possess a social tendency; and that its tendency, in this case, is likely to be the more social, the more enlarged the description is of the persons whose interests you espouse. Displeasure, venting itself against a man, on account of a mischief supposed to be done by him to the public, may be more social in its effects than any good-will, the exertions of which are confined to an individual.[118]

§ 5. *Conflict among motives.*

XLIII. *Motives impelling and restraining, what.* When a man has it in contemplation to engage in any action, he is

frequently acted upon at the same time by the force of divers motives: one motive, or set of motives, acting in one direction; another motive, or set of motives, acting as it were in an opposite direction. The motives on one side disposing him to engage in the action: those on the other, disposing him not to engage in it. Now, any motive, the influence of which tends to dispose him to engage in the action in question, may be termed an *impelling* motive: any motive, the influence of which tends to dispose him not to engage in it, a *restraining* motive. But these appellations may of course be interchanged, according as the act is of the positive kind, or the negative.[119]

XLIV. *What are the motives most frequently at variance.* It has been shown, that there is no sort of motive but may give birth to any sort of action. It follows, therefore, that there are no two motives but may come to be opposed to one another. Where the tendency of the act is bad, the most common case is for it to have been dictated by a motive either of the self-regarding, or of the dissocial class. In such case the motive of benevolence has commonly been acting, though ineffectually, in the character of a restraining motive.

XLV. *Example to illustrate a struggle among contending motives.* An example may be of use, to show the variety of contending motives, by which a man may be acted upon at the same time. Crillon, a Catholic (at a time when it was generally thought meritorious among Catholics to extirpate Protestants), was ordered by his king, Charles IX. of France, to fall privately upon Coligny, a Protestant, and assassinate him: his answer was, 'Excuse me, Sire; but I'll fight him with all my heart.'[120] Here, then, were all the three forces above mentioned, including that of the political sanction, acting upon him at once. By the political sanction, or at least so much of the force of it as such a mandate, from such a sovereign, issued on such an occasion, might be supposed to carry with it, he was enjoined to put Coligny to death in the way of assassination: by the religious sanction, that is, by the dictates of religious zeal, he was enjoined to put him to death in any way: by the moral sanction, or in other words, by the dictates of honour, that is, of the love of reputation, he was permitted (which permission, when coupled with the mandates

of his sovereign, operated, he conceived, as an injunction) to fight the adversary upon equal terms: by the dictates of enlarged benevolence (supposing the mandate to be unjustifiable) he was enjoined not to attempt his life in any way, but to remain at peace with him: supposing the mandate to be unjustifiable, by the dictates of private benevolence he was enjoined not to meddle with him at any rate. Among this confusion of repugnant dictates, Crillon, it seems, gave the preference, in the first place, to those of honour: in the next place, to those of benevolence. He would have fought, had his offer been accepted; as it was not, he remained at peace.

Here a multitude of questions might arise. Supposing the dictates of the political sanction to follow the mandate of the sovereign, of what kind were the motives which they afforded him for compliance? The answer is, of the self-regarding kind at any rate: inasmuch as, by the supposition, it was in the power of the sovereign to punish him for non-compliance, or reward him for compliance. Did they afford him the motive of religion? (I mean independently of the circumstance of heresy above mentioned) the answer is, Yes, if his notion was, that it was God's pleasure he should comply with them; No, if it was not. Did they afford him the motive of the love of reputation? Yes, if it was his notion that the world would expect and require that he should comply with them: No, if it was not. Did they afford him that of benevolence? Yes, if it was his notion that the community would upon the whole be the better for his complying with them: No, if it was not. But did the dictates of the political sanction, in the case in question, actually follow the mandates of the sovereign: in other words, was such a mandate legal? This we see is a mere question of local jurisprudence, altogether foreign to the present purpose.

XLVI. *Practical use of the above disquisitions relative to motives.* What is here said about the goodness and badness of motives, is far from being a mere matter of words. There will be occasion to make use of it hereafter for various important purposes. I shall have need of it for the sake of dissipating various prejudices, which are of disservice to the community, sometimes by cherishing the flame of civil dissensions,[121] at

other times, by obstructing the course of justice. It will be shown, that in the case of many offences,[122] the consideration of the motive is a most material one: for that in the first place it makes a very material difference in the magnitude of the mischief: [123] in the next place, that it is easy to be ascertained; and thence may be made a ground for a difference in the demand for punishment: but that in other cases it is altogether incapable of being ascertained; and that, were it capable of being ever so well ascertained, good or bad, it could make no difference in the demand for punishment: that in all cases, the motive that may happen to govern a prosecutor, is a consideration totally immaterial: whence may be seen the mischievousness of the prejudice that is so apt to be entertained against informers; and the consequence it is of that the judge, in particular, should be proof against the influence of such delusions.

Lastly, The subject of motives is one with which it is necessary to be acquainted, in order to pass a judgment on any means that may be proposed for combating offences in their source.[124]

But before the theoretical foundation for these practical observations can be completely laid, it is necessary we should say something on the subject of *disposition:* which, accordingly, will furnish matter for the ensuing chapter.

CHAPTER XI.

OF HUMAN DISPOSITIONS IN GENERAL.

I. *Disposition what.* In the foregoing chapter it has been shown at large, that goodness or badness cannot, with any propriety, be predicated of motives. Is there nothing then about a man that can properly be termed good or bad, when, on such or such an occasion, he suffers himself to be governed by such or such a motive? Yes, certainly: his *disposition.* Now disposition is a kind of fictitious entity, feigned for the convenience of discourse, in order to express what there is supposed to be *permanent* in a man's frame of mind, where, on such or such an occasion, he has been influenced by such or such a motive, to engage in an act, which, as it appeared to him, was of such or such a tendency.

II. *—how far it belongs to the present subject.* It is with disposition as with every thing else: it will be good or bad according to its effects: according to the effects it has in augmenting or diminishing the happiness of the community. A man's disposition may accordingly be considered in two points of view: according to the influence it has, either, 1. on his own happiness: or, 2. on the happiness of others. Viewed in both these lights together, or in either of them indiscriminately, it may be termed, on the one hand, good; on the other, bad; or, in flagrant cases, depraved.[125] Viewed in the former of these lights, it has scarcely any peculiar name, which has as yet been appropriated to it. It might be termed, though but inexpressively, frail or infirm, on the one hand: sound or firm, on the other. Viewed in the other light, it might be termed beneficent, or meritorious, on the one hand:

pernicious or mischievous, on the other. Now of that branch of a man's disposition, the effects of which regard in the first instance only himself, there needs not much to be said here. To reform it when bad, is the business rather of the moralist than the legislator: nor is it susceptible of those various modifications which make so material a difference in the effects of the other. Again, with respect to that part of it, the effects whereof regard others in the first instance, it is only in as far as it is of a mischievous nature that the penal branch of law has any immediate concern with it: in as far as it may be of a beneficent nature, it belongs to a hitherto but little cultivated, and as yet unnamed branch of law, which might be styled the remuneratory.

III. *A mischievous disposition; a meritorious disposition; what.* A man then is said to be of a mischievous disposition, when, by the influence of no matter what motives, he is *presumed* to be more apt to engage, or form intentions of engaging, in acts which are *apparently* of a pernicious tendency, than in such as are apparently of a beneficial tendency: of a meritorious or beneficent disposition in the opposite case.

IV. *What a man's disposition is, can only be matter of presumption.* I say presumed: for, by the supposition, all that appears is one single action, attended with one single train of circumstances: but from that degree of consistency and uniformity which experience has shown to be observable in the different actions of the same person, the probable existence (past or future) of a number of acts of a similar nature, is naturally and justly inferred from the observation of one single one. Under such circumstances, such as the motive proves to be in one instance, such is the disposition to be presumed to be in others.

V. *It depends upon what the act appears to be to him.* I say *apparently* mischievous: that is, apparently with regard to him: such as to him appear to possess that tendency: for from the mere event, independent of what to him it appears beforehand likely to be, nothing can be inferred on either side. If to him it appears likely to be mischievous, in such case, though in the upshot it should prove innocent, or even beneficial, it makes no difference; there is not the less reason for

presuming his disposition to be a bad one: if to him it appears likely to be beneficial or innocent, in such case, though in the upshot it should prove pernicious, there is not the more reason on that account for presuming his disposition to be a good one. And here we see the importance of the circumstances of intentionality,[126] consciousness,[127] unconsciousness,[127] and mis-supposal.[127]

VI. *Which position is grounded on two facts*: 1. *The correspondence between intentions and consequences*: The truth of these positions depends upon two others, both of them sufficiently verified by experience: The one is, that in the ordinary course of things the consequences of actions commonly turn out conformable to intentions. A man who sets up a butcher's shop, and deals in beef, when he intends to knock down an ox, commonly does knock down an ox; though by some unlucky accident he may chance to miss his blow and knock down a man: he who sets up a grocer's shop, and deals in sugar, when he intends to sell sugar, commonly does sell sugar: though by some unlucky accident he may chance to sell arsenic in the room of it.

VII. 2. *Between the intentions of the same person at different times*. The other is, that a man who entertains intentions of doing mischief at one time is apt to entertain the like intentions at another.[128]

VIII. *The disposition is to be inferred*: 1. *From the apparent tendency of the act*: 2. *From the nature of the motive*. There are two circumstances upon which the nature of the disposition, as indicated by any act, is liable to depend: 1. The apparent tendency of the act: 2. The nature of the motive which gave birth to it. This dependency is subject to different rules, according to the nature of the motive. In stating them, I suppose all along the apparent tendency of the act to be, as it commonly is, the same as the real.

IX. 1. *Case* 1. *Tendency*, good—*motive*, *self-regarding*. Where the tendency of the act is *good*, and the motive is of the *self-regarding* kind. In this case the motive affords no inference on either side. It affords no indication of a good disposition: but neither does it afford any indication of a bad one.

A baker sells his bread to a hungry man who asks for it.

This, we see, is one of those acts of which, in ordinary cases, the tendency is unquestionably good. The baker's motive is the ordinary commercial motive of pecuniary interest. It is plain, that there is nothing in the transaction, thus stated, that can afford the least ground for presuming that the baker is a better or a worse man than any of his neighbours.

X. 2. *Case 2. Tendency,* bad—*motive, self-regarding.* Where the tendency of the act is *bad,* and the motive, as before, is of the *self-regarding* kind. In this case the disposition indicated is a mischievous one.

A man steals bread out of a baker's shop: this is one of those acts of which the tendency will readily be acknowledged to be bad. Why, and in what respects it is so, will be stated farther on.[129] His motive, we will say, is that of pecuniary interest; the desire of getting the value of the bread for nothing. His disposition, accordingly, appears to be a bad one: for every one will allow a thievish disposition to be a bad one.

XI. 3. *Case 3. Tendency,* good—*motive, good-will.* Where the tendency of the act is *good,* and the motive is the purely social one of *good-will.* In this case the disposition indicated is a beneficent one.

A baker gives a poor man a loaf of bread. His motive is compassion; a name given to the motive of benevolence, in particular cases of its operation. The disposition indicated by the baker, in this case, is such as every man will be ready enough to acknowledge to be a good one.

XII. 4. *Case 4. Tendency,* bad—*motive, good-will.* Where the tendency of the act is *bad,* and the motive is the purely social one of good-will. Even in this case the disposition which the motive indicates is dubious: it may be a mischievous or a meritorious one, as it happens; according as the mischievousness of the act is more or less apparent.

XIII. *This case not an impossible one.* It may be thought, that a case of this sort cannot exist; and that to suppose it, is a contradiction in terms. For the act is one, which, by the supposition, the agent knows to be a mischievous one. How then can it be, that good-will, that is, the desire of doing good, could have been the motive that led him into it? To reconcile this, we must advert to the distinction between enlarged

benevolence and confined.[180] The motive that led him into it was that of confined benevolence. Had he followed the dicitates of enlarged benevolence, he would not have done what he did. Now, although he followed the dictates of that branch of benevolence, which in any single instance of its exertion is mischievous, when opposed to the other, yet, as the cases which call for the exertion of the former are, beyond comparison, more numerous than those which call for the exertion of the latter, the disposition indicated by him, in following the impulse of the former, will often be such as in a man, of the common run of men, may be allowed to be a good one upon the whole.

XIV. *Example I.* A man with a numerous family of children, on the point of starving, goes into a baker's shop, steals a loaf, divides it all among the children, reserving none of it for himself. It will be hard to infer that that man's disposition is a mischievous one upon the whole. Alter the case, give him but one child, and that hungry perhaps, but in no imminent danger of starving: and now let the man set fire to a house full of people, for the sake of stealing money out of it to buy the bread with. The disposition here indicated will hardly be looked upon as a good one.

XV. *Example II.* Another case will appear more difficult to decide than either. Ravaillac assassinated one of the best and wisest of sovereigns, at a time when a good and wise sovereign, a blessing at all times so valuable to a state, was particularly precious: and that to the inhabitants of a populous and extensive empire. He is taken, and doomed to the most excruciating tortures. His son, well persuaded of his being a sincere penitent, and that mankind, in case of his being at large, would have nothing more to fear from him, effectuates his escape. Is this then a sign of a good disposition in the son, or of a bad one? Perhaps some will answer, of a bad one; for, besides the interest which the nation has in the sufferings of such a criminal, on the score of the example, the future good behaviour of such a criminal is more than any one can have sufficient ground to be persuaded of.

XVI. *Example III.* Well then, let Ravaillac, the son, not facilitate his father's escape; but content himself with convey-

ing poison to him, that at the price of an easier death he may escape his torments. The decision will now, perhaps, be more difficult. The *act* is a wrong one, let it be allowed, and such as ought by all means to be punished: but is the *disposition* manifested by it a bad one? Because the young man breaks the laws in this one instance, is it probable, that if let alone, he would break the laws in ordinary instances, for the satisfaction of any inordinate desires of his own? The answer of most men would probably be in the negative.

XVII. 5. *Case 5. Tendency*, good—*motive, love of reputation*. Where the tendency of the act is *good*, and the motive is a semi-social one, the *love of reputation*. In this case the disposition indicated is a good one.

In a time of scarcity, a baker, for the sake of gaining the esteem of the neighbourhood, distributes bread *gratis* among the industrious poor. Let this be taken for granted: and let it be allowed to be a matter of uncertainty, whether he had any real feeling for the sufferings of those whom he has relieved, or no. His disposition, for all that, cannot, with any pretence of reason, be termed otherwise than a good and beneficent one. It can only be in consequence of some very idle prejudice, if it receives a different name.[181]

XVIII. 6. *Case 6. Tendency*, bad—*motive, honour*. Where the tendency of the act is *bad*, and the motive, as before, is a semi-social one, the love of reputation. In this case, the disposition which it indicates is more or less good or bad: in the first place, according as the tendency of the act is more or less mischievous: in the next place according as the dictates of the moral sanction, in the society in question, approach more or less to a coincidence with those of utility. It does not seem probable, that in any nation, which is in a state of tolerable civilization, in short, in any nation in which such rules as these can come to be consulted, the dictates of the moral sanction will so far recede from a coincidence with those of utility (that is, of enlightened benevolence) that the disposition indicated in this case can be otherwise than a good one upon the whole.

XIX. *Example I.* An Indian receives an injury, real or imaginary, from an Indian of another tribe. He revenges it

upon the person of his antagonist with the most excruciating torments: the case being, that cruelties inflicted on such an occasion, gain him reputation in his own tribe. The disposition manifested in such a case can never be deemed a good one, among a people ever so few degrees advanced, in point of civilization, above the Indians.

XX. *Example II.* A nobleman (to come back to Europe) contracts a debt with a poor tradesman. The same nobleman, presently afterwards, contracts a debt, to the same amount, to another nobleman, at play. He is unable to pay both: he pays the whole debt to the companion of his amusements, and no part of it to the tradesman. The disposition manifested in this case can scarcely be termed otherwise than a bad one. It is certainly, however, not so bad as if he had paid neither. The principle of love of reputation, or (as it is called in the case of this partial application of it) honour, is here opposed to the worthier principle of benevolence, and gets the better of it. But it gets the better also of the self-regarding principle of pecuniary interest. The disposition, therefore, which it indicates, although not so good a one as that in which the principle of benevolence predominates, is better than one in which the principle of self-interest predominates. He would be the better for having more benevolence: but would he be the better for having no honour? This seems to admit of great dispute.[182]

XXI. 7 *Case 7. Tendency,* good—*motive, piety.* Where the tendency of the act is *good,* and the motive is the semi-social one of *religion.* In this case, the disposition indicated by it (considered with respect to the influence of it on the man's conduct towards others) is manifestly a beneficent and meritorious one.

A baker distributes bread *gratis* among the industrious poor. It is not that he feels for their distresses: nor is it for the sake of gaining reputation among his neighbours. It is for the sake of gaining the favour of the Deity: to whom, he takes for granted, such conduct will be acceptable. The disposition manifested by such conduct is plainly what every man would call a good one.

XXII. 8. *Case 8. Tendency,* bad—*motive, religion.* Where

the tendency of the act is *bad*, and the motive is that of religion, as before. In this case the disposition is dubious. It is good or bad, and more or less good or bad, in the first place, as the tendency of the act is more or less mischievous; in the next place, according as the religious tenets of the person in question approach more or less to a coincidence with the dictates of utility.

XXIII. *The disposition may be bad in this case.* It should seem from history, that even in nations in a tolerable state of civilization in other respects, the dictates of religion have been found so far to recede from a coincidence with those of utility; in other words, from those of enlightened benevolence; that the disposition indicated in this case may even be a bad one upon the whole. This however is no objection to the inference which it affords of a good disposition in those countries (such as perhaps are most of the countries of Europe at present) in which its dictates respecting the conduct of a man towards other men approach very nearly to a coincidence with those of utility. The dictates of religion, in their application to the conduct of a man in what concerns himself alone, seem in most European nations to savour a good deal of the ascetic principle: but the obedience to such mistaken dictates indicates not any such disposition as is likely to break out into acts of pernicious tendency with respect to others. Instances in which the dictates of religion lead a man into acts which are pernicious in this latter view, seem at present to be but rare: unless it be acts of persecution, or impolitic measures on the part of government, where the law itself is either the principal actor or an accomplice in the mischief. Ravaillac, instigated by no other motive than this, gave his country one of the most fatal stabs that a country ever received from a single hand: but happily the Ravaillacs are but rare. They have been more frequent, however, in France than in any other country during the same period: and it is remarkable, that in every instance it is this motive that has produced them. When they do appear, however, nobody, I suppose, but such as themselves, will be for terming a disposition, such as they manifest, a good one. It seems hardly to be denied, but that they are just so much the worse

for their notions of religion; and that had they been left to the sole guidance of benevolence, and the love of reputation, without any religion at all, it would have been but so much the better for mankind. One may say nearly the same thing, perhaps, of those persons who, without any particular obligation, have taken an active part in the execution of laws made for the punishment of those who have the misfortune to differ with the magistrate in matters of religion, much more of the legislator himself, who has put it in their power. If Louis XIV. had had no religion, France would not have lost 800,000 of its most valuable subjects. The same thing may be said of the authors of the wars called holy ones; whether waged against persons called Infidels, or persons branded with the still more odious name of Heretics. In Denmark, not a great many years ago, a sect is said to have arisen, who, by a strange perversion of reason, took it into their heads, that, by leading to repentance, murder, or any other horrid crime, might be made the road to heaven. It should all along, however, be observed, that instances of this latter kind were always rare: and that in almost all the countries of Europe, instances of the former kind, though once abundantly frequent, have for some time ceased. In certain countries, however, persecution at home, or (what produces a degree of restraint, which is one part of the mischiefs of persecution) I mean the *disposition* to persecute, whensoever occasion happens, is not yet at an end: insomuch that if there is no *actual* persecution, it is only because there are no heretics; and if there are no heretics, it is only because there are no thinkers.[188]

XXIV. 9. *Case* 9. *Tendency*, good—*motive*, *malevolence*. Where the tendency of the act is *good*, and the motive (as before) is the dissocial one of ill-will. In this case the motive seems not to afford any indication on either side. It is no indication of a good disposition; but neither is it any indication of a bad one.

Example. You have detected a baker in selling short weight: you prosecute him for the cheat. It is not for the sake of gain that you engaged in the prosecution; for there is nothing to be got by it: it is not from public spirit: it is not for the sake of reputation; for there is no reputation to be got by it: it is

not in the view of pleasing the Deity: it is merely on account of a quarrel you have with the man you prosecute. From the transaction, as thus stated, there does not seem to be any thing to be said either in favour of your disposition or against it. The tendency of the act is good: but you would not have engaged in it, had it not been from a motive which there seems no particular reason to conclude will ever prompt you to engage in an act of the same kind again. Your motive is of that sort which may, with least impropriety, be termed a bad one: but the act is of that sort, which, were it engaged in ever so often, could never have any evil tendency; nor indeed any other tendency than a good one. By the supposition, the motive it happened to be dictated by was that of ill-will: but the act itself is of such a nature as to have wanted nothing but sufficient discernment on your part in order to have been dictated by the most enlarged benevolence. Now, from a man's having suffered himself to be induced to gratify his resentment by means of an act of which the tendency is good, it by no means follows that he would be ready on another occasion, through the influence of the same sort of motive, to engage in any act of which the tendency is a bad one. The motive that impelled you was a dissocial one: but what social motive could there have been to restrain you? None, but what might have been outweighed by a more enlarged motive of the same kind. Now, because the dissocial motive prevailed when it stood alone, it by no means follows that it would prevail when it had a social one to combat it.

XXV. 10. *Case* 10. *Tendency*, bad—*motive, malevolence.* Where the tendency of the act is *bad*, and the motive is the dissocial one of malevolence. In this case the disposition it indicates is of course a mischievous one.

Example. The man who stole the bread from the baker, as before, did it with no other view than merely to impoverish and afflict him: accordingly, when he had got the bread, he did not eat, or sell it; but destroyed it. That the disposition, evidenced by such a transaction, is a bad one, is what every body must perceive immediately.

XXVI. *Problem—to measure the depravity in a man's disposition.* Thus much with respect to the circumstances from

which the mischievousness or meritoriousness of a man's disposition is to be inferred in the gross: we come now to the *measure* of that mischievousness or meritoriousness, as resulting from those circumstances. Now with meritorious acts and dispositions we have no direct concern in the present work. All that penal law is concerned to do, is to measure the depravity of the disposition where the act is mischievous. To this object, therefore, we shall here confine ourselves.

XXVII. *A man's disposition is constituted by the sum of his intentions:* It is evident, that the nature of a man's disposition must depend upon the nature of the motives he is apt to be influenced by: in other words, upon the degree of his sensibility to the force of such and such motives. For his disposition is, as it were, the sum of his intentions: the disposition he is of during a certain period, the sum or result of his intentions during that period. If, of the acts he has been intending to engage in during the supposed period, those which are apparently of a mischievous tendency, bear a large proportion to those which appear to him to be of the contrary tendency, his disposition will be of the mischievous cast: if but a small proportion, of the innocent or upright.

XXVIII. *—which owe their birth to motives.* Now intentions, like every thing else, are produced by the things that are their causes: and the causes of intentions are motives. If, on any occasion, a man forms either a good or a bad intention, it must be by the influence of some motive.

XXIX. *A seducing or corrupting motive, what—a tutelary or preservatory motive.* When the act, which a motive prompts a man to engage in, is of a mischievous nature, it may, for distinction's sake, be termed a *seducing* or corrupting motive: in which case also any motive which, in opposition to the former, acts in the character of a restraining motive, may be styled a *tutelary*, preservatory, or preserving motive.

XXX. *Tutelary motives are either standing or occasional.* Tutelary motives may again be distinguished into *standing* or constant, and *occasional*. By standing tutelary motives, I mean such as act with more or less force in all, or at least in most cases, tending to restrain a man from *any* mischievous

acts he may be prompted to engage in; and that with a force which depends upon the general nature of the act, rather than upon any accidental circumstance with which any individual act of that sort may happen to be accompanied. By occasional tutelary motives, I mean such motives as may chance to act in this direction or not, according to the nature of the act, and of the particular occasion on which the engaging in it is brought into contemplation.

XXXI. *Standing tutelary motives are,* 1. *Good-will.* Now it has been shown, that there is no sort of motive by which a man may not be prompted to engage in acts that are of a mischievous nature; that is, which may not come to act in the capacity of a seducing motive. It has been shown, on the other hand, that there are some motives which are remarkably less likely to operate in this way than others. It has also been shown, that the least likely of all is that of benevolence or good-will: the most common tendency of which, it has been shown, is to act in the character of a tutelary motive. It has also been shown, that even when by accident it acts in one way in the character of a seducing motive, still in another way it acts in the opposite character of a tutelary one. The motive of good-will, in as far as it respects the interests of one set of persons, may prompt a man to engage in acts which are productive of mischief to another and more extensive set: but this is only because his good-will is imperfect and confined: not taking into contemplation the interests of all the persons whose interests are at stake. The same motive, were the affection it issued from more enlarged, would operate effectually, in the character of a constraining motive, against that very act to which, by the supposition, it gives birth. This same sort of motive may therefore, without any real contradiction or deviation from truth, be ranked in the number of standing tutelary motives, notwithstanding the occasions in which it may act at the same time in the character of a seducing one.

XXXII. 2. *The love of reputation.* The same observation, nearly, may be applied to the semi-social motive of love of reputation. The force of this, like that of the former, is liable to be divided against itself. As in the case of good-will, the interests of some of the persons, who may be the objects of

that sentiment, are liable to be at variance with those of others: so in the case of love of reputation, the sentiments of some of the persons, whose good opinion is desired, may be at variance with the sentiments of other persons of that number. Now in the case of an act, which is really of a mischievous nature, it can scarcely happen that there shall be no persons whatever who will look upon it with an eye of disapprobation. It can scarcely ever happen, therefore, that an act really mischievous shall not have some part at least, if not the whole, of the force of this motive to oppose it; nor, therefore, that this motive should not act with some degree of force in the character of a tutelary motive. This, therefore, may be set down as another article in the catalogue of standing tutelary motives.

XXXIII. 3. *The desire of amity.* The same observation may be applied to the desire of amity, though not in altogether equal measure. For, notwithstanding the mischievousness of an act, it may happen, without much difficulty, that all the persons for whose amity a man entertains any particular present desire which is accompanied with expectation, may concur in regarding it with an eye rather of approbation than the contrary. This is but too apt to be the case among such fraternities as those of thieves, smugglers, and many other denominations of offenders. This, however, is not constantly, nor indeed most commonly the case: insomuch, that the desire of amity may still be regarded, upon the whole, as a tutelary motive, were it only from the closeness of its connexion with the love of reputation. And it may be ranked among standing tutelary motives, since, where it does apply, the force with which it acts, depends not upon the occasional circumstances of the act which it opposes, but upon principles as general as those upon which depend the action of the other semi-social motives.

XXXIV. 4. *The motive of religion.* The motive of religion is not altogether in the same case with the three former. The force of it is not, like theirs, liable to be divided against itself. I mean in the civilized nations of modern times, among whom the notion of the unity of the Godhead is universal. In times of classical antiquity it was otherwise. If a man got Venus on

his side, Pallas was on the other: if Æolus was for him, Neptune was against him. Æneas, with all his piety, had but a partial interest at the court of heaven. That matter stands upon a different footing now-a-days. In any given person, the force of religion, whatever it be, is now all of it on one side. It may balance, indeed, on which side it shall declare itself: and it may declare itself, as we have seen already in but too many instances, on the wrong as well as on the right. It has been, at least till lately, perhaps is still, accustomed so much to declare itself on the wrong side, and that in such material instances, that on that account it seemed not proper to place it, in point of social tendency, on a level altogether with the motive of benevolence. Where it does act, however, as it does in by far the greatest number of cases, in opposition to the ordinary seducing motives, it acts, like the motive of benevolence, in an uniform manner, not depending upon the particular circumstances that may attend the commission of the act; but tending to oppose it, merely on account of its mischievousness; and therefore, with equal force, in whatsoever circumstances it may be proposed to be committed. This, therefore, may also be added to the catalogue of standing tutelary motives.

XXXV. *Occasional tutelary motives may be any whatsoever.* As to the motives which may operate occasionally in the character of tutelary motives, these, it has been already intimated, are of various sorts, and various degrees of strength in various offences: depending not only upon the nature of the offence, but upon the accidental circumstances in which the idea of engaging in it may come in contemplation. Nor is there any sort of motive which may not come to operate in this character; as may be easily conceived. A thief, for instance, may be prevented from engaging in a projected scheme of house-breaking, by sitting too long over his bottle,[184] by a visit from his doxy, by the occasion he may have to go elsewhere, in order to receive his dividend of a former booty; [185] and so on.

XXXVI. *Motives that are particularly apt to act in this character are, 1. Love of ease. 2. Self-preservation.* There are some motives, however, which seem more apt to act in this

character than others; especially as things are now constituted, now that the law has every where opposed to the force of the principal seducing motives, artificial tutelary motives of its own creation. Of the motives here meant it will be necessary to take a general view. They seem to be reducible to two heads; viz. 1. The love of ease; a motive put into action by the prospect of the trouble of the attempt; that is, the trouble which it may be necessary to bestow, in overcoming the physical difficulties that may accompany it. 2. Self-preservation, as opposed to the dangers to which a man may be exposed in the prosecution of it.

XXXVII. *Dangers to which self-preservation is most apt in this case to have respect, are,* 1. *Dangers purely physical.* 2. *Dangers depending on detection.* These dangers may be either, 1. Of a purely physical nature: or, 2. Dangers resulting from moral agency; in other words, from the conduct of any such persons to whom the act, if known, may be expected to prove obnoxious. But moral agency supposes knowledge with respect to the circumstances that are to have the effect of external motives in giving birth to it. Now the obtaining such knowledge, with respect to the commission of any obnoxious act, on the part of any persons who may be disposed to make the agent suffer for it, is called *detection*; and the agent concerning whom such knowledge is obtained, is said to be detected. The dangers, therefore, which may threaten an offender from this quarter, depend, whatever they may be, on the event of his detection; and may, therefore, be all of them comprised under the article of the *danger of detection.*

XXXVIII. *Danger depending on detection may result from,* 1. *Opposition on the spot:* 2. *Subsequent punishment.* The danger depending upon detection may be divided again into two branches: 1. That which may result from any opposition that may be made to the enterprise by persons on the spot; that is, at the very time the enterprise is carrying on: 2. That which respects the legal punishment, or other suffering, that may await at a distance upon the issue of the enterprise.

XXXIX. *The force of the two standing tutelary motives of love of reputation, and desire of amity, depends upon detection.* It may be worth calling to mind on this occasion, that among the tutelary motives, which have been styled constant ones, there are two of which the force depends (though not so entirely as the force of the occasional ones which have been just mentioned, yet in a great measure) upon the circumstance of detection. These, it may be remembered, are, the love of reputation, and the desire of amity. In proportion, therefore, as the chance of being detected appears greater, these motives will apply with the greater force: with the less force, as it appears less. This is not the case with the two other standing tutelary motives, that of benevolence, and that of religion.

XL. *Strength of a temptation, what is meant by it.* We are now in a condition to determine, with some degree of precision, what is to be understood by the *strength of a temptation*, and what indication it may give of the degree of mischievousness in a man's disposition in the case of any offence. When a man is prompted to engage in any mischievous act, we will say, for shortness, in an offence, the strength of the temptation depends upon the ratio between the force of the seducing motives on the one hand, and such of the occasional tutelary ones, as the circumstances of the case call forth into action, on the other. The temptation, then, may be said to be strong, when the pleasure or advantage to be got from the crime is such as in the eyes of the offender must appear great in comparison of the trouble and danger that appear to him to accompany the enterprise: slight or weak, when that pleasure or advantage is such as must appear small in comparison of such trouble and such danger. It is plain the strength of the temptation depends not upon the force of the impelling (that is of the seducing) motives altogether: for let the opportunity be more favourable, that is, let the trouble, or any branch of the danger, be made less than before, it will be acknowledged, that the temptation is made so much the stronger: and on the other hand, let the opportunity become less favourable,

or, in other words, let the trouble, or any branch of the danger, be made greater than before, the temptation will be so much the weaker.

Now, after taking account of such tutelary motives as have been styled occasional, the only tutelary motives that can remain are those which have been termed standing ones. But those which have been termed the standing tutelary motives, are the same that we have been styling social. It follows, therefore, that the strength of the temptation, in any case, after deducting the force of the social motives, is as the sum of the forces of the seducing, to the sum of the forces of the occasional tutelary motives.

XLI. *Indications afforded by this and other circumstances respecting the depravity of an offender's disposition.* It remains to be inquired, what indication concerning the mischievousness or depravity of a man's disposition is afforded by the strength of the temptation, in the case where any offence happens to have been committed. It appears, then, that the weaker the temptation is, by which a man has been overcome, the more depraved and mischievous it shows his disposition to have been. For the goodness of his disposition is measured by the degree of his sensibility to the action of the social motives: [186] in other words, by the strength of the influence which those motives have over him: now, the less considerable the force is by which their influence on him has been overcome, the more convincing is the proof that has been given of the weakness of that influence.

Again, The degree of a man's sensibility to the force of the social motives being given, it is plain that the force with which those motives tend to restrain him from engaging in any mischievous enterprise, will be as the apparent mischievousness of such enterprise, that is, as the degree of mischief with which it appears to *him* likely to be attended. In other words, the less mischievous the offence appears to him to be, the less averse he will be, as far as he is guided by social considerations, to engage in it; the more mischievous, the more averse. If then the nature of the offence is such as must appear to him highly mischievous, and yet he engages in it notwithstanding, it shows, that the degree of his sensibility

to the force of the social motives is but slight; and consequently that his disposition is proportionably depraved. Moreover, the less the strength of the temptation was, the more pernicious and depraved does it show his disposition to have been. For the less the strength of the temptation was, the less was the force which the influence of those motives had to overcome: the clearer therefore is the proof that has been given of the weakness of that influence.

XLII. *Rules for measuring the depravity of disposition indicated by an offence.* From what has been said, it seems, that, for judging of the indication that is afforded concerning the depravity of a man's disposition by the strength of the temptation, compared with the mischievousness of the enterprise, the following rules may be laid down:

Rule 1. *The strength of the temptation being given, the mischievousness of the disposition manifested by the enterprise, is as the apparent mischievousness of the act.*

Thus, it would show a more depraved disposition, to murder a man for a reward of a guinea, or falsely to charge him with a robbery for the same reward, than to obtain the same sum from him by simple theft: the trouble he would have to take, and the risk he would have to run, being supposed to stand on the same footing in the one case as in the other.

Rule 2. *The apparent mischievousness of the act being given, a man's disposition is the more depraved, the slighter the temptation is by which he has been overcome.*

Thus, it shows a more depraved and dangerous disposition, if a man kill another out of mere sport, as the Emperor of Morocco, Muley Mahomet, is said to have done great numbers, than out of revenge, as Sylla and Marius did thousands, or in the view of self-preservation, as Augustus killed many, or even for lucre, as the same Emperor is said to have killed some. And the effects of such a depravity, on that part of the public which is apprized of it, run in the same proportion. From Augustus, some persons only had to fear, under some particular circumstances. From Muley Mahomet, every man had to fear at all times.

Rule 3. *The apparent mischievousness of the act being*

given, the evidence which it affords of the depravity of a man's disposition is the less conclusive, the stronger the temptation is by which he has been overcome.

Thus, if a poor man, who is ready to die with hunger, steal a loaf of bread, it is a less explicit sign of depravity, than if a rich man were to commit a theft to the same amount. It will be observed, that in this rule all that is said is, that the evidence of depravity is in this case the less conclusive: it is not said that the depravity is positively the less. For in this case it is possible, for any thing that appears to the contrary, that the theft might have been committed, even had the temptation been not so strong. In this case, the alleviating circumstance is only a matter of presumption; in the former, the aggravating circumstance is a matter of certainty.

Rule 4. *Where the motive is of the dissocial kind, the apparent mischievousness of the act, and the strength of the temptation, being given, the depravity is as the degree of deliberation with which it is accompanied.*

For in every man, be his disposition ever so depraved, the social motives are those which, wherever the self-regarding ones stand neuter, regulate and determine the general tenor of his life. If the dissocial motives are put in action, it is only in particular circumstances, and on particular occasions; the gentle but constant force of the social motives being for a while subdued. The general and standing bias of every man's nature is, therefore, towards that side to which the force of the social motives would determine him to adhere. This being the case, the force of the social motives tends continually to put an end to that of the dissocial ones; as, in natural bodies, the force of friction tends to put an end to that which is generated by impulse. Time, then, which wears away the force of the dissocial motives, adds to that of the social. The longer, therefore, a man continues, on a given occasion, under the dominion of the dissocial motives, the more convincing is the proof that has been given of his insensibility to the force of the social ones.

Thus, it shows a worse disposition, where a man lays a deliberate plan for beating his antagonist, and beats him

accordingly, than if he were to beat him upon the spot, in consequence of a sudden quarrel: and worse again, if, after having had him a long while together in his power, he beats him at intervals, and at his leisure.[137]

XLIII. *Use of this chapter.* The depravity of disposition, indicated by an act, is a material consideration in several respects. Any mark of extraordinary depravity, by adding to the terror already inspired by the crime, and by holding up the offender as a person from whom there may be more mischief to be apprehended in future, adds in that way to the demand for punishment. By indicating a general want of sensibility on the part of the offender, it may add in another way also to the demand for punishment. The article of disposition is of the more importance, inasmuch as, in measuring out the quantum of punishment, the principle of sympathy and antipathy is apt to look at nothing else. A man who punishes because he hates, and only because he hates, such a man, when he does not find any thing odious in the disposition, is not for punishing at all; and when he does, he is not for carrying the punishment further than his hatred carries him. Hence the aversion we find so frequently expressed against the maxim, that the punishment must rise with the strength of the temptation; a maxim, the contrary of which, as we shall see, would be as cruel to offenders themselves, as it would be subversive of the purposes of punishment.

CHAPTER XII.

OF THE CONSEQUENCES OF A MISCHIEVOUS ACT.

§ 1. *Shapes in which the mischief of an act may show itself.*

I. *Recapitulation.* Hitherto we have been speaking of the various articles or objects on which the consequences or tendency of an act may depend: of the bare *act* itself: of the *circumstances* it may have been, or may have been supposed to be, accompanied with: of the *consciousness* a man may have had with respect to any such circumstances: of the *intentions* that may have preceded the act: of the *motives* that may have given birth to those intentions: and of the *disposition* that may have been indicated by the connexion between such intentions and such motives. We now come to speak of *consequences* or tendency: an article which forms the concluding link in all this chain of causes and effects, involving in it the materiality of the whole. Now, such part of this tendency as is of a mischievous nature, is all that we have any direct concern with; to that, therefore, we shall here confine ourselves.

II. *Mischief of an act, the aggregate of its mischievous consequences.* The tendency of an act is mischievous when the consequences of it are mischievous; that is to say, either the certain consequences or the probable. The consequences, how many and whatsoever they may be, of an act, of which the tendency is mischievous, may, such of them as are mischievous, be conceived to constitute one aggregate body, which may be termed the mischief of the act.

III. *The mischief of an act, primary or secondary.* This mischief may frequently be distinguished, as it were, into

two shares or parcels: the one containing what may be called the primary mischief; the other, what may be called the secondary. That share may be termed the *primary*, which it sustained by an assignable individual, or a multitude of assignable individuals. That share may be termed the *secondary*, which, taking its origin from the former, extends itself either over the whole community, or over some other multitude of unassignable individuals.

IV. *Primary—original, or derivative.* The primary mischief of an act may again be distinguished into two branches: 1. The *original:* and, 2. The *derivative.* By the original branch, I mean that which alights upon and is confined to any person who is a sufferer in the first instance, and on his own account: the person, for instance, who is beaten, robbed, or murdered. By the derivative branch, I mean any share of mischief which may befall any other assignable persons in consequence of his being a sufferer, and no otherwise. These persons must, of course, be persons who in some way or other are connected with him. Now the ways in which one person may be connected with another, have been already seen: they may be connected in the way of *interest* (meaning self-regarding interest) or merely in the way of *sympathy.* And again, persons connected with a given person, in the way of interest, may be connected with him either by affording *support* to him, or by deriving it from him.[138]

V. *The secondary—1. Alarm: or, 2. Danger.* The secondary mischief, again, may frequently be seen to consist of two other shares or parcels: the first consisting of *pain;* the other of *danger.* The pain which it produces is a pain of apprehension: a pain grounded on the apprehension of suffering such mischiefs or inconveniences, whatever they may be, as it is the nature of the primary mischief to produce. It may be styled, in one word, the *alarm.* The danger is the *chance,* whatever it may be, which the multitude it concerns may in consequence of the primary mischief stand exposed to, of suffering such mischiefs or inconveniences. For danger is nothing but the chance of pain, or, what comes to the same thing, of loss of pleasure.

VI. *Example.* An example may serve to make this clear.

A man attacks you on the road, and robs you. You suffer a pain on the occasion of losing so much money: [139] you also suffered a pain at the thoughts of the personal ill-treatment you apprehended he might give you, in case of your not happening to satisfy his demands.[140] These together constitute the original branch of the primary mischief, resulting from the act of robbery. A creditor of yours, who expected you to pay him with part of that money, and a son of yours, who expected you to have given him another part, are in consequence disappointed. You are obliged to have recourse to the bounty of your father, to make good part of the deficiency. These mischiefs together make up the derivative branch. The report of this robbery circulates from hand to hand, and spreads itself in the neighbourhood. It finds its way into the newspapers, and is propagated over the whole country. Various people, on this occasion, call to mind the danger which they and their friends, as it appears from this example, stand exposed to in travelling; especially such as may have occasion to travel the same road. On this occasion they naturally feel a certain degree of pain: slighter or heavier, according to the degree of ill-treatment they may understand you to have received; the frequency of the occasion each person may have to travel in that same road, or its neighbourhood; the vicinity of each person to the spot; his personal courage; the quantity of money he may have occasion to carry about with him; and a variety of other circumstances. This constitutes the first part of the secondary mischief, resulting from the act of robbery; viz. the alarm. But people of one description or other, not only are disposed to conceive themselves to incur a chance of being robbed, in consequence of the robbery committed upon you, but (as will be shown presently) they do really incur such a chance. And it is this chance which constitutes the remaining part of the secondary mischief of the act of robbery; viz. the danger.

VII. *The danger, whence it arises—a past offence affords no direct motive to a future.* Let us see what this chance amounts to; and whence it comes. How is it, for instance, that one robbery can contribute to produce another? In the

first place, it is certain that it cannot create any direct motive. A motive must be the prospect of some pleasure, or other advantage, to be enjoyed in future: but the robbery in question is past: nor would it furnish any such prospect were it to come: for it is not one robbery that will furnish pleasure to him who may be about to commit another robbery. The consideration that is to operate upon a man, as a motive or inducement to commit a robbery, must be the idea of the pleasure he expects to derive from the fruits of that very robbery: but this pleasure exists independently of any other robbery.

VIII. *But it suggests feasibility, and weakens the force of restraining motives*; The means, then, by which one robbery tends, as it should seem, to produce another robbery, are two. 1. By suggesting to a person exposed to the temptation, the idea of committing such another robbery (accompanied, perhaps, with the belief of its facility). In this case the influence it exerts applies itself, in the first place, to the understanding. 2. By weakening the force of the tutelary motives which tend to restrain him from such an action, and thereby adding to the strength of the temptation.[141] In this case the influence applies itself to the will. These forces are, 1. The motive of benevolence, which acts as a branch of the physical sanction.[142] 2. The motive of self-preservation, as against the punishment that may stand provided by the political sanction. 3. The fear of shame; a motive belonging to the moral sanction. 4. The fear of the divine displeasure; a motive belonging to the religious sanction. On the first and last of these forces it has, perhaps, no influence worth insisting on: but it has on the other two.

IX. *viz.* 1. *Those issuing from the political sanction.* The way in which a past robbery may weaken the force with which the *political* sanction tends to prevent a future robbery, may be thus conceived. The way in which this sanction tends to prevent a robbery, is by denouncing some particular kind of punishment against any who shall be guilty of it: the *real* value of which punishment will of course be diminished by the *real* uncertainty: as also, if there be any difference, the *apparent* value by the *apparent* uncertainty. Now this un-

certainty is proportionably increased by every instance in which a man is known to commit the offence, without undergoing the punishment. This, of course, will be the case with every offence for a certain time; in short, until the punishment allotted to it takes place. If punishment takes place at last, this branch of the mischief of the offence is then at last, but not till then, put a stop to.

X. 2. *Those issuing from the moral.* The way in which a past robbery may weaken the force with which the *moral* sanction tends to prevent a future robbery, may be thus conceived. The way in which the moral sanction tends to prevent a robbery, is by holding forth the indignation of mankind as ready to fall upon him who shall be guilty of it. Now this indignation will be the more formidable, according to the number of those who join in it: it will be the less so, the fewer they are who join in it. But there cannot be a stronger way of showing that a man does not join in whatever indignation may be entertained against a practice, than the engaging in it himself. It shows not only that he himself feels no indignation against it, but that it seems to him there is no sufficient reason for apprehending what indignation may be felt against it by others. Accordingly, where robberies are frequent, and unpunished, robberies are committed without shame. It was thus amongst the Grecians formerly.[148] It is thus among the Arabs still.

XI. *It is said to operate by the influence of example.* In whichever way then a past offence tends to pave the way for the commission of a future offence, whether by suggesting the idea of committing it, or by adding to the strength of the temptation, in both cases it may be said to operate by the force or *influence of example.*

XII. *The alarm and the danger, though connected, are distinguishable.* The two branches of the secondary mischief of an act, the alarm and the danger, must not be confounded: though intimately connected, they are perfectly distinct: either may subsist without the other. The neighbourhood may be alarmed with the report of a robbery, when, in fact, no robbery either has been committed or is in a way to be committed: a neighbourhood may be on the point of

being disturbed by robberies, without knowing any thing of the matter. Accordingly, we shall soon perceive, that some acts produce alarm without danger: others, danger without alarm.

XIII. *Both may have respect to the same person, or to others.* As well the danger as the alarm may again be divided, each of them, into two branches: the first, consisting of so much of the alarm or danger as may be apt to result from the future behaviour of the same agent: the second, consisting of so much as may be apt to result from the behaviour of other persons: such others, to wit, as may come to engage in acts of the same sort and tendency.[144]

XIV. *The primary consequences of an act may be mischievous, and the secondary beneficial.* The distinction between the primary and the secondary consequences of an act must be carefully attended to. It is so just, that the latter may often be of a directly opposite nature to the former. In some cases, where the primary consequences of the act are attended with a mischief, the secondary consequences may be beneficial, and that to such a degree, as even greatly to outweigh the mischief of the primary. This is the case, for instance, with all acts of punishment, when properly applied. Of these, the primary mischief being never intended to fall but upon such persons as may happen to have committed some act which it is expedient to prevent, the secondary mischief, that is, the alarm and the danger, extends no farther than to such persons as are under temptation to commit it: in which case, in as far as it tends to restrain them from committing such acts, it is of a beneficial nature.

XV. *Analysis of the different shapes in which the mischief of an act may show itself.* Thus much with regard to acts that produce positive pain, and that immediately. This case, by reason of its simplicity, seemed the fittest to take the lead. But acts may produce mischief in various other ways; which, together with those already specified, may all be comprized by the following abridged analysis.

Mischief may admit of a division in any one of three points of view. 1. According to its own *nature*. 2. According to its *cause*. 3. According to the person, or other party, who

is the *object* of it.[145] With regard to its nature, it may be either *simple* or *complex:* [146] when simple, it may either be *positive* or *negative:* positive, consisting of actual pain: negative, consisting of the loss of pleasure. Whether simple or complex, and whether positive or negative, it may be either *certain* or *contingent.* When it is negative, it consists of the loss of some benefit or advantage: this benefit may be material in both or either of two ways: 1. By affording actual pleasure: or, 2. By averting pain or *danger,* which is the chance of pain: that is, by affording *security.* In as far, then, as the benefit which a mischief tends to avert, is productive of security, the tendency of such mischief is to produce *insecurity.* 2. With regard to its *cause,* mischief may be produced either by one *single* action, or not without the *concurrence* of other actions: if not without the concurrence of other actions, these others may be the actions either of the *same person,* or of *other* persons: in either case, they may be either acts of the *same kind* as that in question, or of *other* kinds. 3. Lastly, with regard to the party who is the *object* of the mischief, or, in other words, who is in a way to be affected by it, such party may be either an *assignable* [147] individual, or assemblage of individuals, or else a multitude of *unassignable* individuals. When the object is an assignable individual, this individual may either be the person *himself* who is the author of the mischief, or some *other* person. When the individuals who are the objects of it, are an unassignable multitude, this multitude may be either the *whole* political community or state, or some *subordinate* division of it. Now when the object of the mischief is the author himself, it may be styled *self-regarding:* when any other party is the object, *extra-regarding:* when such other party is an individual, it may be styled *private:* when a subordinate branch of the community, *semi-public:* when the whole community, *public.* Here, for the present, we must stop. To pursue the subject through its inferior distinctions, will be the business of the chapter which exhibits the division of offences.[148]

—*applied to the preceding cases.* The cases which have

been already illustrated, are those in which the primary mischief is not necessarily otherwise than a simple one, and that positive: present, and therefore certain: producible by a single action, without any necessity of the concurrence of any other action, either on the part of the same agent, or of others; and having for its object an assignable individual, or, by accident, an assemblage of assignable individuals: extra-regarding therefore, and private. This primary mischief is accompanied by a secondary: the first branch of which is sometimes contingent and sometimes certain, the other never otherwise than contingent: both extra-regarding and semi-public: in other respects, pretty much upon a par with the primary mischief: except that the first branch, viz. the alarm, though inferior in magnitude to the primary, is, in point of extent, and therefore, upon the whole, in point of magnitude, much superior.

XVI. —*to examples of other cases where the mischief is less conspicuous.* Two instances more will be sufficient to illustrate the most material of the modifications above exhibited.

Example I. An act of self-intoxication. A man drinks a certain quantity of liquor, and intoxicates himself. The intoxication in this particular instance does him no sort of harm: or, what comes to the same thing, none that is perceptible. But it is probable, and indeed next to certain, that a given number of acts of the same kind would do him a very considerable degree of harm: more or less according to his constitution and other circumstances: for this is no more than what experience manifests every day. It is also certain, that one act of this sort, by one means or other, tends considerably to increase the disposition a man may be in to practice other acts of the same sort: for this also is verified by experience. This, therefore, is one instance where the mischief producible by the act is contingent? in other words, in which the tendency of the act is no otherwise mischievous than in virtue of its producing a *chance* of mischief. This chance depends upon the concurrence of other acts of the same kind; and those such as must be practised by the same person. The

object of the mischief is that very person himself who is the author of it, and he only, unless by accident. The mischief is therefore private and self-regarding.

As to its secondary mischief, alarm, it produces none: it produces indeed a certain quantity of danger by the influence of example: but it is not often that this danger will amount to a quantity worth regarding.

XVII. *Example II. Non-payment of a tax.* Again. A man omits paying his share to a public tax. This we see is an act of the negative kind.[149] Is this then to be placed upon the list of mischievous acts? Yes, certainly. Upon what grounds? Upon the following. To defend the community against its external as well as its internal adversaries, are tasks, not to mention others of a less indispensable nature, which cannot be fulfilled but at a considerable expense. But whence is the money for defraying this expense to come? It can be obtained in no other manner than by contributions to be collected from individuals; in a word, by taxes. The produce then of these taxes is to be looked upon as a kind of *benefit* which it is necessary the governing part of the community should receive for the use of the whole. This produce, before it can be applied to its destination, requires that there should be certain persons commissioned to receive and to apply it. Now if these persons, had they received it, would have applied it to its proper destination, it would have been a benefit: the not putting them in a way to receive it, is then a mischief. But it is possible, that if received, it might not have been applied to its proper destination; or that the services, in consideration of which it was bestowed, might not have been performed. It is possible, that the under-officer, who collected the produce of the tax, might not have paid it over to his principal: it is possible that the principal might not have forwarded it on according to its farther destination; to the judge, for instance, who is to protect the community against its clandestine enemies from within, or the soldier, who is to protect it against its open enemies from without: it is possible that the judge, or the soldier, had they received it, would not however have been induced by it to fulfil their respective duties: it is possible, that the judge

would not have sat for the punishment of criminals, and the decision of controversies: it is possible that the soldier would not have drawn his sword in the defence of the community. These, together with an infinity of other intermediate acts, which for the sake of brevity I pass over, form a connected chain of duties, the discharge of which is necessary to the preservation of the community. They must every one of them be discharged, ere the benefit to which they are contributory can be produced. If they are all discharged, in that case the benefit subsists, and any act, by tending to intercept that benefit, may produce a mischief. But if any of them are not, the benefit fails: it fails of itself: it would not have subsisted, although the act in question (the act of non-payment) had not been committed. The benefit is therefore contingent; and, accordingly, upon a certain supposition, the act which consists in the averting of it is not a mischievous one. But this supposition, in any tolerably-ordered government, will rarely indeed be verified. In the very worst-ordered government that exists, the greatest part of the duties that are levied are paid over according to their destination: and, with regard to any particular sum, that is attempted to be levied upon any particular person upon any particular occasion, it is therefore manifest, that, unless it be certain that it will not be so disposed of, the act of withholding it is a mischievous one.

The act of payment, when referable to any particular sum, especially if it be a small one, might also have failed of proving beneficial on another ground: and, consequently, the act of nonpayment, of proving mischievous. It is possible that the same services, precisely, might have been rendered without the money as with it. If, then, speaking of any small limited sum, such as the greatest which any one person is called upon to pay at a time, a man were to say, that the non-payment of it would be attended with mischievous consequences; this would be far from certain: but what comes to the same thing as if it were, it is perfectly certain when applied to the whole. It is certain, that if all of a sudden the payment of all taxes was to cease, there would no longer be any thing effectual done, either for the maintenance of justice, or for the defence

of the community against its foreign adversaries: that therefore the weak would presently be oppressed and injured in all manner of ways, by the strong at home, and both together overwhelmed by oppressors from abroad. Upon the whole, therefore, it is manifest, that in this case, though the mischief is remote and contingent, though in its first appearance it consists of nothing more than the interception of a *benefit*, and though the individuals, in whose favour that benefit would have been reduced into the explicit form of pleasure or security, are altogether unassignable, yet the mischievous tendency of the act is not on all these accounts the less indisputable. The mischief, in point of *intensity* and *duration*, is indeed unknown: it is *uncertain:* it is *remote*. But in point of *extent* it is immense; and in point of *fecundity*, pregnant to a degree that baffles calculation.

XVIII. *No alarm, when no assignable person is the object.* It may now be time to observe, that it is only in the case where the mischief is extra-regarding, and has an assignable person or persons for its object, that so much of the secondary branch of it as consists in *alarm* can have place. When the individuals it affects are uncertain, and altogether out of sight, no alarm can be produced: as there is nobody whose sufferings you can see, there is nobody whose sufferings you can be alarmed at. No alarm, for instance, is produced by nonpayment to a tax. If at any distant and uncertain period of time such offence should chance to be productive of any kind of alarm, it would appear to proceed, as indeed immediately it would proceed, from a very different cause. It might be immediately referable, for example, to the act of a legislator, who should deem it necessary to lay on a new tax, in order to make up for the deficiency occasioned in the produce of the old one. Or it might be referable to the act of an enemy, who, under favour of a deficiency thus created in the fund allotted for defence, might invade the country, and exact from it much heavier contributions than those which had been thus withholden from the sovereign.[160]

As to any alarm which such an offence might raise among the few who might chance to regard the matter with the

eyes of statesmen, it is of too slight and uncertain a nature to be worth taking into the account.

§ 2. *How Intentionality, &c. may influence the mischief of an act.*

XIX. *Secondary mischief influenced by the state of the agent's mind.* We have seen the nature of the secondary mischief, which is apt to be reflected, as it were, from the primary, in the cases where the individuals who are the objects of the mischief are assignable. It is now time to examine into the circumstances upon which the production of such secondary mischief depends. These circumstances are no others than the four articles which have formed the subjects of the four last preceding chapters: viz. 1. The intentionality. 2. The consciousness. 3. The motive. 4. The disposition. It is to be observed all along, that it is only the *danger* that is immediately governed by the *real* state of the mind in respect to those articles: it is by the *apparent* state of it that the *alarm* is governed. It is governed by the real only in as far as the apparent happens, as in most cases it may be expected to do, to quadrate with the real. The different influences of the articles of intentionality and consciousness may be represented in the several cases following.

XX. Case 1. *Involuntariness.* Where the act is so completely unintentional, as to be altogether *involuntary.* In this case it is attended with no secondary mischief at all.

A bricklayer is at work upon a house: a passenger is walking in the street below. A fellow-workman comes and gives the bricklayer a violent push, in consequence of which he falls upon the passenger, and hurts him. It is plain there is nothing in this event that can give other people, who may happen to be in the street, the least reason to apprehend any thing in future on the part of the man who fell, whatever there may be with regard to the man who pushed him.

XXI. Case 2. *Unintentionality with heedlessness.* Where the act, though not unintentional, is *unadvised,* insomuch that the mischievous part of the consequences is unintentional, but the unadvisedness is attended with *heedlessness.*

In this case the act is attended with some small degree of secondary mischief, in proportion to the degree of heedlessness.

A groom being on horseback, and riding through a frequented street, turns a corner at a full pace, and rides over a passenger, who happens to be going by. It is plain, by this behaviour of the groom, some degree of alarm may be produced, less or greater, according to the degree of heedlessness betrayed by him: according to the quickness of his pace, the fulness of the street, and so forth. He has done mischief, it may be said, by his carelessness, already: who knows but that on other occasions the like cause may produce the like effect?

XXII. Case 3. *Missupposal of a complete justification, without rashness.* Where the act is *misadvised* with respect to a circumstance, which, had it existed, would *fully* have excluded or (what comes to the same thing) outweighed the primary mischief: and there is no rashness in the case. In this case the act is attended with no secondary mischief at all.

It is needless to multiply examples any farther.

XXIII. Case 4. *Missupposal of a partial justification, without rashness.* Where the act is misadvised with respect to a circumstance which would have excluded or counterbalanced the primary mischief *in part*, but not entirely: and still there is no rashness. In this case the act is attended with some degree of secondary mischief, in proportion to that part of the primary which remains unexcluded or uncounterbalanced.

XXIV. Case 5. *Missupposal, with rashness.* Where the act is misadvised with respect to a circumstance, which, had it existed, would have excluded or counterbalanced the primary mischief entirely, or in part: and there is a degree of *rashness* in the supposal. In this case, the act is also attended with a farther degree of secondary mischief, in proportion to the degree of rashness.

XXV. Case 6. *Consequences completely intentional, and free from missupposal.* Where the consequences are *completely* intentional, and there is no missupposal in the case. In this case the secondary mischief is at the highest.

XXVI. *The nature of a motive takes not away the mischief of the secondary consequences.* Thus much with regard to intentionality and consciousness. We now come to consider in what manner the secondary mischief is affected by the nature of the *motive*.

Where an act is pernicious in its primary consequences, the secondary mischief is not obliterated by the *goodness* of the motive; though the motive be of the best kind. For, notwithstanding the goodness of the motive, an act of which the primary consequences are pernicious, is produced by it in the instance in question, by the supposition. It may, therefore, in other instances: although this is not so likely to happen from a good motive as from a bad one.[151]

XXVII. *Nor the beneficialness.* An act, which, though pernicious in its primary consequences, is rendered in other respects beneficial upon the whole, by virtue of its secondary consequences, is not changed back again, and rendered pernicious upon the whole by the *badness* of the motive: although the motive be of the worst kind.[151a]

XXVIII. *But it may aggravate the mischievousness, where they are mischievous.* But when not only the primary consequences of an act are pernicious, but, in other respects, the secondary likewise, the secondary mischief may be *aggravated* by the nature of the motive: so much of that mischief, to wit, as respects the future behaviour of the same person.

XXIX. *But not the most in the cases of the worst motives.* It is not from the worst kind of motive, however, that the secondary mischief of an act receives its greatest aggravation.

XXX. *It does the more, the more considerable the tendency of the motive to produce such acts.* The aggravation which the secondary mischief of an act, in as far as it respects the future behaviour of the same person, receives from the nature of a motive in an individual case, is as the tendency of the motive to produce, on the part of the same person, acts of the like bad tendency with that of the act in question.

XXXI. *—which is as its strength and constancy.* The tendency of a motive to produce acts of the like kind, on the part of any given person, is as the *strength* and *constancy* of its

influence on that person, as applied to the production of such effects.

XXXII. *General efficacy of a species of motive, how measured.* The tendency of a species of motive to give birth to acts of any kind, among persons in general, is as the *strength*, *constancy*, and *extensiveness*[152] of its influence, as applied to the production of such effects.

XXXIII. *A mischievous act is more so, when issuing from a self-regarding than when from a dissocial motive.* Now the motives, whereof the influence is at once most powerful, most constant, and most extensive, are the motives of physical desire, the love of wealth, the love of ease, the love of life, and the fear of pain: all of them self-regarding motives. The motive of displeasure, whatever it may be in point of strength and extensiveness, is not near so constant in its influence (the case of mere antipathy excepted) as any of the other three. A pernicious act, therefore, when committed through vengeance, or otherwise through displeasure, is not near so mischievous as the same pernicious act, when committed by force of any one of those other motives.[153]

XXXIV. *—so even when issuing from the motive of religion.* As to the motive of religion, whatever it may sometimes prove to be in point of strength and constancy, it is not in point of extent so universal, especially in its application to acts of a mischievous nature, as any of the three preceding motives. It may, however, be as universal in a particular state, or in a particular district of a particular state. It is liable indeed to be very irregular in its operations. It is apt, however, to be frequently as powerful as the motive of vengeance, or indeed any other motive whatsoever. It will sometimes even be more powerful than any other motive. It is, at any rate, much more constant.[154] A pernicious act, therefore, when committed through the motive of religion, is more mischievous than when committed through the motive of ill-will.

XXXV. *How the secondary mischief is influenced by disposition.* Lastly, The secondary mischief, to wit, so much of it as hath respect to the future behaviour of the same person, is aggravated or lessened by the apparent depravity or benefi-

cence of his disposition: and that in the proportion of such apparent depravity or beneficence.

XXXVI. *Connexion of this with the succeeding chapter.* The consequences we have hitherto been speaking of, are the *natural* consequences, of which the act, and the other articles we have been considering, are the causes: consequences that result from the behaviour of the individual, who is the offending agent, without the interference of political authority. We now come to speak of *punishment:* which, in the sense in which it is here considered, is an *artificial* consequence, annexed by political authority to an offensive act, in one instance; in the view of putting a stop to the production of events similar to the obnoxious part of its natural consequences, in other instances.

CHAPTER XIII.

CASES UNMEET FOR PUNISHMENT.

§ 1. *General view of cases unmeet for punishment.*

I. *The end of law is, to augment happiness.* The general object which all laws have, or ought to have, in common, is to augment the total happiness of the community; and therefore, in the first place, to exclude, as far as may be, every thing that tends to subtract from that happiness: in other words, to exclude mischief.

II. *But punishment is an evil.* But all punishment is mischief: all punishment in itself is evil. Upon the principle of utility, if it ought at all to be admitted, it ought only to be admitted in as far as it promises to exclude some greater evil.[155]

III. *Therefore ought not to be admitted;* It is plain, therefore, that in the following cases punishment ought not to be inflicted.

1. *Where groundless.* Where it is *groundless:* where there is no mischief for it to prevent; the act not being mischievous upon the whole.

2. *Inefficacious.* Where it must be *inefficacious:* where it cannot act so as to prevent the mischief.

3. *Unprofitable.* Where it is *unprofitable,* or too *expensive:* where the mischief it would produce would be greater than what it prevented.

4. *Or needless.* Where it is *needless:* where the mischief may be prevented, or cease of itself, without it: that is, at a cheaper rate.

§ 2. *Cases in which punishment is groundless.*

These are,

IV. 1. *Where there has never been any mischief: as in the case of consent.* Where there has never been any mischief: where no mischief has been produced to any body by the act in question. Of this number are those in which the act was such as might, on some occasions, be mischievous or disagreeable, but the person whose interest it concerns gave his *consent* to the performance of it.[156] This consent, provided it be free, and fairly obtained,[156] is the best proof that can be produced, that, to the person who gives it, no mischief, at least no immediate mischief, upon the whole, is done. For no man can be so good a judge as the man himself, what it is gives him pleasure or displeasure.

V. 2. *Where the mischief was outweighed: as in precaution against calamity, and the exercise of powers.* Where the mischief was *outweighed*: although a mischief was produced by that act, yet the same act was necessary to the production of a benefit which was of greater value[157] than the mischief. This may be the case with any thing that is done in the way of precaution against instant calamity, as also with any thing that is done in the exercise of the several sorts of powers necessary to be established in every community, to wit, domestic, judicial, military, and supreme.[158]

VI. 3. *—or will, for a certainty be cured by compensation.* Where there is a certainty of an adequate compensation: and that in all cases where the offence can be committed. This supposes two things: 1. That the offence is such as admits of an adequate compensation: 2. That such a compensation is sure to be forthcoming. Of these suppositions, the latter will be found to be a merely ideal one: a supposition that cannot, in the universality here given to it, be verified by fact. It cannot, therefore, in practice, be numbered amongst the grounds of absolute impunity. It may, however, be admitted as a ground for an abatement of that punishment, which other considerations, standing by themselves, would seem to dictate.[159]

§ 3. *Cases in which punishment must be inefficacious.*

These are,

VII. 1. *Where the penal provision comes too late: as in,* 1. *An ex-post-facto law,* 2. *An ultra-legal sentence.* Where the penal provision is *not established* until after the act is done. Such are the cases, 1. Of an *ex-post-facto* law; where the legislator himself appoints not a punishment till after the act is done. 2. Of a sentence beyond the law; where the judge, of his own authority, appoints a punishment which the legislator had not appointed.

VIII. 2. *Or is not made known: as in a law not sufficiently promulgated.* Where the penal provision, though established, is *not conveyed* to the notice of the person on whom it seems intended that it should operate. Such is the case where the law has omitted to employ any of the expedients which are necessary, to make sure that every person whatsoever, who is within the reach of the law, be apprized of all the cases whatsoever, in which (being in the station of life he is in) he can be subjected to the penalties of the law.[160]

IX. 3. *Where the will cannot be deterred from* any *act: as in,* Where the penal provision, though it were conveyed to a man's notice, *could produce no effect* on him, with respect to the preventing him from engaging in any act of the *sort* in question. Such is the case, 1. In extreme *infancy;* where a man has not yet attained that state or disposition of mind in which the prospect of evils so distant as those which are held forth by the law, has the effect of influencing his conduct. 2. In *insanity;* where the person, if he has attained to that disposition, has since been deprived of it through the influence of some permanent though unseen cause. 3. In *intoxication;* where he has been deprived of it by the transient influence of a visible cause: such as the use of wine, or opium, or other drugs, that act in this manner on the nervous system: which condition is indeed neither more nor less than a temporary insanity produced by an assignable cause.[161]

X. 4. *Or not from the individual act in question, as in,* Where the penal provision (although, being conveyed to the party's notice, it might very well prevent his engaging in acts

of the sort in question, provided he knew that it related to those acts) could not have this effect, with regard to the *individual* act he is about to engage in: to wit, because he knows not that it is of the number of those to which the penal provision relates. This may happen, 1. In the case of *unintentionality*; where he intends not to engage, and thereby knows not that he is about to engage, in the *act* in which eventually he is about to engage.[162] 2. In the case of *unconsciousness*; where, although he may know that he is about to engage in the *act* itself, yet, from not knowing all the material *circumstances* attending it, he knows not of the *tendency* it has to produce that mischief, in contemplation of which it has been made penal in most instances. 3. In the case of *missupposal*; where, although he may know of the tendency the act has to produce that degree of mischief, he supposes it, though mistakenly, to be attended with some circumstance, or set of circumstances, which, if it had been attended with, it would either not have been productive of that mischief, or have been productive of such a greater degree of good, as has determined the legislator in such a case not to make it penal.[163]

XI. 5. *Or is acted on by an opposite superior force: as by,* Where, though the penal clause might exercise a full and prevailing influence, were it to act alone, yet by the *predominant* influence of some opposite cause upon the will, it must necessarily be ineffectual; because the evil which he sets himself about to undergo, in the case of his *not* engaging in the act, is so great, that the evil denounced by the penal clause, in case of his engaging in it, cannot appear greater. This may happen, 1. In the case of *physical danger*; where the evil is such as appears likely to be brought about by the unassisted powers of *nature*. 2. In the case of a *threatened mischief*; where it is such as appears likely to be brought about through the intentional and conscious agency of *man*.[164]

XII. 6. —*or the bodily organs cannot follow its determination: as under* Where (though the penal clause may exert a full and prevailing influence over the *will* of the party) yet his *physical faculties* (owing to the predominant influence of some physical cause) are not in a condition to follow the determination of the will: insomuch that the act is absolutely

involuntary. Such is the case of physical *compulsion* or *restraint*, by whatever means brought about; where the man's hand, for instance, is pushed against some object which his will disposes him *not* to touch; or tied down from touching some object which his will disposes him to touch.

§ 4. *Cases where punishment is unprofitable.*

These are,

XIII. 1. *Where, in the* sort *of case in question, the punishment would produce more evil than the offence would.* Where, on the one hand, the nature of the offence, on the other hand, that of the punishment, are, *in the ordinary state of things*, such, that when compared together, the evil of the latter will turn out to be greater than that of the former.

XIV. *Evil producible by a punishment—its four branches —viz.* Now the evil of the punishment divides itself into four branches, by which so many different sets of persons are affected. 1. The evil of *coercion* or *restraint:* or the pain which it gives a man not to be able to do the act, whatever it be, which by the apprehension of the punishment he is deterred from doing. This is felt by those by whom the law is *observed*. 2. The evil of *apprehension:* or the pain which a man, who has exposed himself to punishment, feels at the thoughts of undergoing it. This is felt by those by whom the law has been *broken*, and who feel themselves in *danger* of its being executed upon them. 3. The evil of *sufferance:* [165] or the pain which a man feels, in virtue of the punishment itself, from the time when he begins to undergo it. This is felt by those by whom the law is broken, and upon whom it comes actually to be executed. 4. The pain of sympathy, and the other *derivative* evils resulting to the persons who are in *connection* with the several classes of original sufferers just mentioned.[166] Now of these four lots of evil, the first will be greater or less, according to the nature of the act from which the party is restrained: the second and third according to the nature of the punishment which stands annexed to that offence.

XV. *(The evil of the offence being different, according to the nature of the offence, cannot be represented here.)* On

the other hand, as to the evil of the offence, this will also, of course, be greater or less, according to the nature of each offence. The proportion between the one evil and the other will therefore be different in the case of each particular offence. The cases, therefore, where punishment is unprofitable on this ground, can by no other means be discovered, than by an examination of each particular offence; which is what will be the business of the body of the work.

XVI. 2. —*or in the* individual *case in question: by reason of* Where, although in the *ordinary state* of things, the evil resulting from the punishment is not greater than the benefit which is likely to result from the force with which it operates, during the same space of time, towards the excluding the evil of the offences, yet it may have been rendered so by the influence of some *occasional circumstances*. In the number of these circumstances may be, 1. *The multitude of delinquents*. The multitude of delinquents at a particular juncture; being such as would increase, beyond the ordinary measure, the *quantum* of the second and third lots, and thereby also of a part of the fourth lot, in the evil of the punishment. 2. *The value of a delinquent's service*. The extraordinary value of the services of some one delinquent; in the case where the effect of the punishment would be to deprive the community of the benefit of those services. 3. *The displeasure of the people*. The displeasure of the *people*; that is, of an indefinite number of the members of the *same* community, in cases where (owing to the influence of some occasional incident) they happen to conceive, that the offence or the offender ought not to be punished at all, or at least ought not to be punished in the way in question. 4. *The displeasure of foreign powers*. The displeasure of *foreign powers*; that is, of the governing body, or a considerable number of the members of some *foreign* community or communities, with which the community in question is connected.

§ 5. *Cases where punishment is needless.*

These are,

XVII. 1. *Where the mischief is to be prevented at a*

cheaper rate; as, Where the purpose of putting an end to the practice may be attained as effectually at a cheaper rate: by instruction, for instance, as well as by terror: by informing the understanding; as well as by exercising an immediate influence on the will. *By instruction.* This seems to be the case with respect to all those offences which consist in the disseminating pernicious principles in matters of *duty*; of whatever kind the duty be; whether political, or moral, or religious. And this, whether such principles be disseminated *under,* or even *without,* a sincere persuasion of their being beneficial. I say, even *without:* for though in such a case it is not instruction that can prevent the writer from endeavouring to inculcate his principles, yet it may the readers from adopting them: without which, his endeavouring to inculcate them will do no harm. In such a case, the sovereign will commonly have little need to take an active part: if it be the interest of *one* individual to inculcate principles that are pernicious, it will as surely be the interest of *other* individuals to expose them. But if the sovereign must needs take a part in the controversy, the pen is the proper weapon to combat error with, not the sword.

CHAPTER XIV.

OF THE PROPORTION BETWEEN PUNISHMENTS AND OFFENCES.

I. *Recapitulation.* We have seen that the general object of all laws is to prevent mischief; that is to say, when it is worth while; but that, where there are no other means of doing this than punishment, there are four cases in which it is *not* worth while.

II. *Four objects of punishment.* When it *is* worth while, there are four subordinate designs or objects, which, in the course of his endeavours to compass, as far as may be, that one general object, a legislator, whose views are governed by the principle of utility, comes naturally to propose to himself.

III. 1. *1st Object—to prevent all offences.* His first, most extensive, and most eligible object, is to prevent, in as far as it is possible, and worth while, all sorts of offences whatsoever: [167] in other words, so to manage, that no offence whatsoever may be committed.

IV. 2. *2d Object—to prevent the worst.* But if a man must needs commit an offence of some kind or other, the next object is to induce him to commit an offence *less* mischievous, *rather* than one *more* mischievous: in other words, to choose always the *least* mischievous, of two offences that will either of them suit his purpose.

V. 3. *3d Object—to keep down the mischief.* When a man has resolved upon a particular offence, the next object is to dispose him to do *no more* mischief than is *necessary* to his purpose: in other words, to do as little mischief as is consistent with the benefit he has in view.

V. 4. *4th Object—to act at the least expense.* The last

object is, whatever the mischief be, which it is proposed to prevent, to prevent it at as *cheap* a rate as possible.

VII. *Rules of proportion between punishments and offences.* Subservient to these four objects, or purposes, must be the rules or canons by which the proportion of punishments [168] to offences is to be governed.

VIII. Rule 1. *Outweigh the profit of the offence.* The first object, it has been seen, is to prevent, in as far as it is worth while, all sorts of offences; therefore,

The value of the punishment must not be less in any case than what is sufficient to outweigh that of the profit [169] *of the offence.*[170]

If it be, the offence (unless some other considerations, independent of the punishment, should intervene and operate efficaciously in the character of tutelary motives) [171] will be sure to be committed notwithstanding: [172] the whole lot of punishment will be thrown away: it will be altogether *inefficacious.*[173]

IX. *The propriety of taking the strength of the temptation for a ground of abatement, no objection to this rule.* The above rule has been often objected to, on account of its seeming harshness: but this can only have happened for want of its being properly understood. The strength of the temptation, *cæteris paribus,* is as the profit of the offence: the quantum of the punishment must rise with the profit of the offence: *cæteris paribus,* it must therefore rise with the strength of the temptation. This there is no disputing. True it is, that the stronger the temptation, the less conclusive is the indication which the act of delinquency affords of the depravity of the offender's disposition.[174] So far then as the absence of any aggravation, arising from extraordinary depravity of disposition, may operate, or at the utmost, so far as the presence of a ground of extenuation, resulting from the innocence or beneficence of the offender's disposition, can operate, the strength of the temptation may operate in abatement of the demand for punishment. But it can never operate so far as to indicate the propriety of making the punishment ineffectual, which it is sure to be when brought below the level of the apparent profit of the offence.

The partial benevolence which should prevail for the reduction of it below this level, would counteract as well those purposes which such a motive would actually have in view, as those more extensive purposes which benevolence ought to have in view: it would be cruelty not only to the public, but to the very persons in whose behalf it pleads: in its effects, I mean, however opposite in its intention. Cruelty to the public, that is cruelty to the innocent, by suffering them, for want of an adequate protection, to lie exposed to the mischief of the offence: cruelty even to the offender himself, by punishing him to no purpose, and without the chance of compassing that beneficial end, by which alone the introduction of the evil of punishment is to be justified.

X. Rule 2. *Venture more against a great offence than a small one.* But whether a given offence shall be prevented in a given degree by a given quantity of punishment, is never any thing better than a chance; for the purchasing of which, whatever punishment is employed, is so much expended in advance. However, for the sake of giving it the better chance of outweighing the profit of the offence,

The greater the mischief of the offence, the greater is the expense, which it may be worth while to be at, in the way of punishment.[175]

XI. Rule 3. *Cause the least of two offences to be preferred.* The next object is, to induce a man to choose always the least mischievous of two offences; therefore

Where two offences come in competition, the punishment for the greater offence must be sufficient to induce a man to prefer the less.[176]

XII. Rule 4. *Punish for each particle of the mischief.* When a man has resolved upon a particular offence, the next object is, to induce him to do no more mischief than what is necessary for his purpose: therefore

The punishment should be adjusted in such manner to each particular offence, that for every part of the mischief there may be a motive to restrain the offender from giving birth to it.[177]

XIII. Rule 5. *Punish in no degree without special reason.*

The last object is, whatever mischief is guarded against, to guard against it at as cheap a rate as possible: therefore

The punishment ought in no case to be more than what is necessary to bring it into conformity with the rules here given.

XIV. Rule 6. *Attend to circumstances influencing sensibility.* It is further to be observed, that owing to the different manners and degrees in which persons under different circumstances are affected by the same exciting cause, a punishment which is the same in name will not always either really produce, or even so much as appear to others to produce, in two different persons the same degree of pain: therefore

That the quantity actually inflicted on each individual offender may correspond to the quantity intended for similar offenders in general, the several circumstances influencing sensibility ought always to be taken into account.[178]

XV. *Comparative view of the above rules.* Of the above rules of proportion, the four first, we may perceive, serve to mark out the limits on the side of diminution; the limits *below* which a punishment ought not to be *diminished:* the fifth, the limits on the side of increase; the limits *above* which it ought not to be *increased.* The five first are calculated to serve as guides to the legislator: the sixth is calculated, in some measure, indeed, for the same purpose; but principally for guiding the judge in his endeavours to conform, on both sides, to the intentions of the legislator.

XVI. *Into the account of the* value *of a punishment must be taken its deficiency in point of certainty and proximity.* Let us look back a little. The first rule, in order to render it more conveniently applicable to practice, may need perhaps to be a little more particularly unfolded. It is to be observed, then, that for the sake of accuracy, it was necessary, instead of the word *quantity* to make use of the less perspicuous term *value.* For the word *quantity* will not properly include the circumstances either of certainty or proximity: circumstances which, in estimating the value of a lot of pain or pleasure, must always be taken into the account.[179] Now, on the one hand, a lot of punishment is a lot of pain; on the other hand, the profit of an offence is a lot of pleasure, or what is equivalent

to it. But the profit of the offence *is* commonly more *certain* than the punishment, or, what comes to the same thing, *appears* so at least to the offender. It is at any rate commonly more *immediate*. It follows, therefore, that, in order to maintain its superiority over the profit of the offence, the punishment must have its value made up in some other way, in proportion to that whereby it falls short in the two points of *certainty* and *proximity*. Now there is no other way in which it can receive any addition to its *value*, but by receiving an addition in point of *magnitude*. Wherever then the value of the punishment falls short, either in point of *certainty*, or of *proximity*, of that of the profit of the offence, it must receive a proportionable addition in point of *magnitude*.[180]

XVII. *Also, into the account of the mischief, and profit of the offence, the mischief and profit of other offences of the same* habit. Yet farther. To make sure of giving the value of the punishment the superiority over that of the offence, it may be necessary, in some cases, to take into the account the profit not only of the *individual* offence to which the punishment is to be annexed, but also of such *other* offences of the *same sort* as the offender is likely to have already committed without detection. This random mode of calculation, severe as it is, it will be impossible to avoid having recourse to, in certain cases: in such, to wit, in which the profit is pecuniary, the chance of detection very small, and the obnoxious act of such a nature as indicates a habit: for example, in the case of frauds against the coin. If it be *not* recurred to, the practice of committing the offence will be sure to be, upon the balance of the account, a gainful practice. That being the case, the legislator will be absolutely sure of *not* being able to suppress it, and the whole punishment that is bestowed upon it will be thrown away. In a word (to keep to the same expressions we set out with) that whole quantity of punishment will be *inefficacious*.

XVIII. Rule 7. *Want of certainty must be made up in magnitude*. These things being considered, the three following rules may be laid down by way of supplement and explanation to Rule 1.

To *enable the value of the punishment to outweigh that*

of the profit of the offence, it must be increased, in point of magnitude, in proportion as it falls short in point of certainty.

XIX. Rule 8. *(So also want of proximity.) Punishment must be further increased in point of magnitude, in proportion as it falls short in point of proximity.*

XX. Rule 9. *(For acts indicative of a habit punish as for the habit.) Where the act is conclusively indicative of a habit, such an increase must be given to the punishment as may enable it to outweigh the profit not only of the individual offence, but of such other like offences as are likely to have been committed with impunity by the same offender.*

XXI. *The remaining rules are of less importance.* There may be a few other circumstances or considerations which may influence, in some small degree, the demand for punishment: but as the propriety of these is either not so demonstrable, or not so constant, or the application of them not so determinate, as that of the foregoing, it may be doubted whether they be worth putting on a level with the others.

XXII. Rule 10. *(For the sake of quality, increase in quantity.) When a punishment, which in point of quality is particularly well calculated to answer its intention, cannot exist in less than a certain quantity, it may sometimes be of use, for the sake of employing it, to stretch a little beyond that quantity which, on other accounts, would be strictly necessary.*

XXIII. Rule 11. *(Particularly for a moral lesson.) In particular, this may sometimes be the case, where the punishment proposed is of such a nature as to be particularly well calculated to answer the purpose of a moral lesson.*[181]

XXIV. Rule 12. *Attend to circumstances which may render punishment unprofitable.* The tendency of the above considerations is to dictate an augmentation in the punishment: the following rule operates in the way of diminution. There are certain cases (it has been seen) [182] in which, by the influence of accidental circumstances, punishment may be rendered unprofitable in the whole: in the same cases it may chance to be rendered unprofitable as to a part only. Accordingly,

In adjusting the quantum of punishment, the circum-

stances, by which all punishment may be rendered unprofitable, ought to be attended to.

XXV. Rule 13. *For simplicity's sake, small disproportions may be neglected.* It is to be observed, that the more various and minute any set of provisions are, the greater the chance is that any given article in them will not be borne in mind: without which, no benefit can ensue from it. Distinctions, which are more complex than what the conceptions of those whose conduct it is designed to influence can take in, will even be worse than useless. The whole system will present a confused appearance: and thus the effect, not only of the proportions established by the articles in question, but of whatever is connected with them, will be destroyed.[183] To draw a precise line of direction in such case seems impossible. However, by way of memento, it may be of some use to subjoin the following rule.

Among provisions designed to perfect the proportion between punishments and offences, if any occur, which, by their own particular good effects, would not make up for the harm they would do by adding to the intricacy of the Code, they should be omitted.[184]

XXVI. *Auxiliary force of the physical, moral, and religious sanction, not here allowed for—why.* It may be remembered, that the political sanction, being that to which the sort of punishment belongs, which in this chapter is all along in view, is but one of four sanctions, which may all of them contribute their share towards producing the same effects. It may be expected, therefore, that in adjusting the quantity of political punishment, allowance should be made for the assistance it may meet with from those other controlling powers. True it is, that from each of these several sources a very powerful assistance may sometimes be derived. But the case is, that (setting aside the moral sanction, in the case where the force of it is expressly adopted into and modified by the political) [185] the force of those other powers is never determinate enough to be depended upon. It can never be reduced, like political punishment, into exact lots, nor meted out in number, quantity, and value. The legislator is therefore obliged to provide the full complement of punishment,

as if he were sure of not receiving any assistance whatever from any of those quarters. If he does, so much the better: but lest he should not, it is necessary he should, at all events, make that provision which depends upon himself.

XXVII. *Recapitulation.* It may be of use, in this place, to recapitulate the several circumstances, which, in establishing the proportion betwixt punishments and offences, are to be attended to. These seem to be as follows:

I. *On the part of the offence:*

1. The profit of the offence;
2. The mischief of the offence;
3. The profit and mischief of other greater or lesser offences, of different sorts, which the offender may have to choose out of;
4. The profit and mischief of other offences, of the same sort, which the same offender may probably have been guilty of already.

II. *On the part of the punishment:*

5. The magnitude of the punishment: composed of its intensity and duration;
6. The deficiency of the punishment in point of certainty;
7. The deficiency of the punishment in point of proximity;
8. The quality of the punishment;
9. The accidental advantage in point of quality of a punishment, not strictly needed in point of quantity;
10. The use of a punishment of a particular quality, in the character of a moral lesson.

III. *On the part of the offender:*

11. The responsibility of the class of persons in a way to offend;
12. The sensibility of each particular offender;
13. The particular merits or useful qualities of any particular offender, in case of a punishment which might deprive the community of the benefit of them;
14. The multitude of offenders on any particular occasion.

IV. *On the part of the public,* at any particular conjuncture:

15. The inclinations of the people, for or against any quantity or mode of punishment;
16. The inclinations of foreign powers.

V. *On the part of the law*: that is, of the public for a continuance:

17. The necessity of making small sacrifices, in point of proportionality, for the sake of simplicity.

XXVIII. *The nicety here observed vindicated from the charge of inutility.* There are some, perhaps, who, at first sight, may look upon the nicety employed in the adjustment of such rules, as so much labour lost: for gross ignorance, they will say, never troubles itself about laws, and passion does not calculate. But the evil of ignorance admits of cure: [186] and as to the proposition that passion does not calculate, this, like most of these very general and oracular propositions, is not true. When matters of such importance as pain and pleasure are at stake, and these in the highest degree (the only matters, in short, that can be of importance) who is there that does not calculate? Men calculate, some with less exactness, indeed, some with more: but all men calculate. I would not say, that even a madman does not calculate.[187] Passion calculates, more or less, in every man: in different men, according to the warmth or coolness of their dispositions: according to the firmness or irritability of their minds: according to the nature of the motives by which they are acted upon. Happily, of all passions, that is the most given to calculation, from the excesses of which, by reason of its strength, constancy, and universality, society has most to apprehend: [188] I mean that which corresponds to the motive of pecuniary interest: so that these niceties, if such they are to be called, have the best chance of being efficacious, where efficacy is of the most importance.

CHAPTER XV.

OF THE PROPERTIES TO BE GIVEN TO A LOT OF PUNISHMENT.

I. *Properties are to be governed by proportion.* It has been shown what the rules are, which ought to be observed in adjusting the proportion between the punishment and the offence. The properties to be given to a lot of punishment, in every instance, will of course be such as it stands in need of, in order to be capable of being applied, in conformity to those rules: the *quality* will be regulated by the *quantity*.

II. *Property* 1. *Variability.* The first of those rules, we may remember, was, that the quantity of punishment must not be less, in any case, than what is sufficient to outweigh the profit of the offence: since, as often as it is less, the whole lot (unless by accident the deficiency should be supplied from some of the other sanctions) is thrown away: it is *inefficacious*. The fifth was, that the punishment ought in no case to be more than what is required by the several other rules: since, if it be, all that is above that quantity is *needless*. The fourth was, that the punishment should be adjusted in such manner to each individual offence, that every part of the mischief of that offence may have a penalty (that is, a tutelary motive) to encounter it: otherwise, with respect to so much of the offence as has not a penalty to correspond to it, it is as if there were no punishment in the case. Now to none of those rules can a lot of punishment be conformable, unless, for every variation in point of quantity, in the mischief of the species of offence to which it is annexed, such lot of punishment admits of a correspondent variation. To prove this, let the profit of the offence admit of a multitude of degrees. Suppose it, then, at any one of these degrees: if the punishment be less

than what is suitable to that degree, it will be *inefficacious*; it will be so much thrown away: if it be more, as far as the difference extends, it will be *needless*; it will therefore be thrown away also in that case.

The first property, therefore, that ought to be given to a lot of punishment, is that of being variable in point of quantity, in conformity to every variation which can take place in either the profit or mischief of the offence. This property might, perhaps, be termed, in a single word, *variability*.

III. *Property 2. Equability.* A second property, intimately connected with the former, may be styled *equability*. It will avail but little, that a mode of punishment (proper in all other respects) has been established by the legislator; and that capable of being screwed up or let down to any degree that can be required; if, after all, whatever degree of it be pitched upon, that same degree shall be liable, according to circumstances, to produce a very heavy degree of pain, or a very slight one, or even none at all. In this case, as in the former, if circumstances happen one way, there will be a great deal of pain produced which will be *needless*: if the other way, there will be no pain at all applied, or none that will be *efficacious*. A punishment, when liable to this irregularity, may be styled an unequable one: when free from it, an equable one. The quantity of pain produced by the punishment will, it is true, depend in a considerable degree upon circumstances distinct from the nature of the punishment itself: upon the condition which the offender is in, with respect to the circumstances by which a man's sensibility is liable to be influenced. But the influence of these very circumstances will in many cases be reciprocally influenced by the nature of the punishment: in other words, the pain which is produced by any mode of punishment, will be the joint effect of the punishment which is applied to him, and the circumstances in which he is exposed to it. Now there are some punishments, of which the effect may be liable to undergo a greater alteration by the influence of such foreign circumstances, than the effect of other punishments is liable to undergo. So far, then, as this is the case, equability or unequability may be regarded as properties belonging to the punishment itself.

IV. *Punishments which are apt to be deficient in this respect.* An example of a mode of punishment which is apt to be unequable, is that of *banishment*, when the *locus a quo* (or place the party is banished from) is some determinate place appointed by the law, which perhaps the offender cares not whether he ever see or no. This is also the case with *pecuniary*, or *quasi-pecuniary* punishment, when it respects some particular species of property, which the offender may have been possessed of, or not, as it may happen. All these punishments may be split down into parcels, and measured out with the utmost nicety: being divisible by time, at least, if by nothing else. They are not, therefore, any of them defective in point of variability: and yet, in many cases, this defect in point of equability may make them as unfit for use as if they were.[189]

V. *Property 3. Commensurability to other punishments.* The third rule of proportion was, that where two offences come in competition, the punishment for the greater offence must be sufficient to induce a man to prefer the less. Now, to be sufficient for this purpose, it must be evidently and uniformly greater: greater, not in the eyes of some men only, but of all men who are liable to be in a situation to take their choice between the two offences; that is, in effect, of all mankind. In other words, the two punishments must be perfectly *commensurable*. Hence arises a third property, which may be termed *commensurability:* to wit, with reference to other punishments.[190]

VI. *How two lots of punishment may be rendered perfectly commensurable.* But punishments of different kinds are in very few instances uniformly greater one than another; especially when the lowest degrees of that which is ordinarily the greater, are compared with the highest degrees of that which is ordinarily the less: in other words, punishments of different kinds are in few instances uniformly commensurable. The only certain and universal means of making two lots of punishment perfectly commensurable, is by making the lesser an ingredient in the composition of the greater. This may be done in either of two ways. 1. By adding to the lesser punishment another quantity of punishment of the same kind. 2.

By adding to it another quantity of a different kind. The latter mode is not less certain than the former: for though one cannot always be absolutely sure, that to the same person a given punishment will appear greater than another given punishment; yet one may be always absolutely sure, that any given punishment, so as it does but come into contemplation, will appear greater than none at all.

VII. *Property 4. Characteristicalness.* Again: Punishment cannot act any farther than in as far as the idea of it, and of its connection with the offence, is present in the mind. The idea of it, if not present, cannot act at all; and then the punishment itself must be *inefficacious*. Now, to be present, it must be remembered, and to be remembered it must have been learnt. But of all punishments that can be imagined, there are none of which the connection with the offence is either so easily learnt, or so efficaciously remembered, as those of which the idea is already in part associated with some part of the idea of the offence: which is the case when the one and the other have some circumstance that belongs to them in common. When this is the case with a punishment and an offence, the punishment is said to bear an *analogy* to, or to be *characteristic* of, the offence.[191] *Characteristicalness* is, therefore, a fourth property, which on this account ought to be given, whenever it can conveniently be given, to a lot of punishment.

VIII. *The mode of punishment the most eminently characteristic, is that of retaliation.* It is obvious, that the effect of this contrivance will be the greater, as the analogy is the closer. The analogy will be the closer, the more *material* [192] that circumstance is, which is in common. Now the most material circumstance that can belong to an offence and a punishment in common, is the hurt or damage which they produce. The closest analogy, therefore, that can subsist between an offence and the punishment annexed to it, is that which subsists between them when the hurt or damage they produce is of the same nature: in other words, that which is constituted by the circumstance of identity in point of damage.[193] Accordingly, the mode of punishment, which of all others bears the closest analogy to the offence, is that which in the

proper and exact sense of the word is termed *retaliation*. Retaliation, therefore, in the few cases in which it is practicable, and not too expensive, will have one great advantage over every other mode of punishment.

IX. *Property 5. Exemplarity.* Again: It is the idea only of the punishment (or, in other words, the *apparent* punishment) that really acts upon the mind; the punishment itself (the *real* punishment) acts not any farther than as giving rise to that idea. It is the apparent punishment, therefore, that does all the service, I mean in the way of example, which is the principal object.[194] It is the real punishment that does all the mischief.[195] Now the ordinary and obvious way of increasing the magnitude of the apparent punishment, is by increasing the magnitude of the real. The apparent magnitude, however, may to a certain degree be increased by other less expensive means: whenever, therefore, at the same time that these less expensive means would have answered that purpose, an additional real punishment is employed, this additional real punishment is *needless*. As to these less expensive means, they consist, 1. In the choice of a particular mode of punishment, a punishment of a particular quality, independent of the quantity.[196] 2. In a particular set of *solemnities* distinct from the punishment itself, and accompanying the execution of it.[197]

X. *The most effectual way of rendering a punishment exemplary is by means of analogy.* A mode of punishment, according as the appearance of it bears a greater proportion to the reality, may be said to be the more *exemplary*. Now as to what concerns the choice of the punishment itself, there is not any means by which a given quantity of punishment can be rendered more exemplary, than by choosing it of such a sort as shall bear an *analogy* to the offence. Hence another reason for rendering the punishment analogous to, or in other words characteristic of, the offence.

XI. *Property 6. Frugality.* Punishment, it is still to be remembered, is in itself an expense: it is in itself an evil.[198] Accordingly the fifth rule of proportion is, not to produce more of it than what is demanded by the other rules. But this is the case as often as any particle of pain is produced, which

contributes nothing to the effect proposed. Now if any mode of punishment is more apt than another to produce any such superfluous and needless pain, it may be styled *unfrugal*; if less, it may be styled *frugal*. *Frugality*, therefore, is a sixth property to be wished for in a mode of punishment.

XII. *Frugality belongs in perfection to pecuniary punishment.* The perfection of frugality, in a mode of punishment, is where not only no superfluous pain is produced on the part of the person punished, but even that same operation, by which he is subjected to pain, is made to answer the purpose of producing pleasure on the part of some other person. Understand a profit or stock of pleasure of the self-regarding kind: for a pleasure of the dissocial kind is produced almost of course, on the part of all persons in whose breasts the offence has excited the sentiment of ill-will. Now this is the case with pecuniary punishment, as also with such punishments of the *quasi-pecuniary* kind as consist in the subtraction of such a species of possession as is transferable from one party to another. The pleasure, indeed, produced by such an operation, is not in general equal to the pain:[199] it may, however, be so in particular circumstances, as where he, from whom the thing is taken, is very rich, and he, to whom it is given, very poor: and, be it what it will, it is always so much more than can be produced by any other mode of punishment.

XIII. *Exemplarity and frugality, in what they differ and agree.* The properties of exemplarity and frugality seem to pursue the same immediate end, though by different courses. Both are occupied in diminishing the ratio of the real suffering to the apparent: but exemplarity tends to increase the apparent; frugality to reduce the real.

XIV. *Other properties of inferior importance.* Thus much concerning the properties to be given to punishments in general, to whatsoever offences they are to be applied. Those which follow are of less importance, either as referring only to certain offences in particular, or depending upon the influence of transitory and local circumstances.

In the first place, the four distinct ends into which the main and general end of punishment is divisible,[200] may give

rise to so many distinct properties, according as any particular mode of punishment appears to be more particularly adapted to the compassing of one or of another of those ends. To that of *example*, as being the principal one, a particular property has already been adapted. There remains the three inferior ones of *reformation*, *disablement*, and *compensation*.

XV. *Property 7. Subserviency to reformation.* A seventh property, therefore, to be wished for in a mode of punishment, is that of *subserviency to reformation*, or *reforming tendency*. Now any punishment is subservient to reformation in proportion to its *quantity:* since the greater the punishment a man has experienced, the stronger is the tendency it has to create in him an aversion towards the offence which was the cause of it: and that with respect to all offences alike. But there are certain punishments which, with regard to certain offences, have a particular tendency to produce that effect by reason of their *quality:* and where this is the case, the punishments in question, as applied to the offences in question, will *pro tanto* have the advantage over all others. This influence will depend upon the nature of the motive which is the cause of the offence: the punishment most subservient to reformation will be the sort of punishment that is best calculated to invalidate the force of that motive.

XVI. *—applied to offences originating in ill-will.* Thus, in offences originating from the motive of ill-will,[201] that punishment has the strongest reforming tendency, which is best calculated to weaken the force of the irascible affections. And more particularly, in that sort of offence which consists in an obstinate refusal, on the part of the offender, to do something which is lawfully required of him,[202] and in which the obstinacy is in great measure kept up by his resentment against those who have an interest in forcing him to compliance, the most efficacious punishment seems to be that of confinement to spare diet.

XVII. *—to offences originating in indolence joined to pecuniary interest.* Thus, also, in offences which owe their birth to the joint influence of indolence and pecuniary interest, that punishment seems to possess the strongest reforming tendency, which is best calculated to weaken the force of the

former of those dispositions. And more particularly, in the cases of theft, embezzlement, and every species of defraudment, the mode of punishment best adapted to this purpose seems, in most cases, to be that of penal labour.

XVIII. *Property 8. Efficacy with respect to disablement.* An eighth property to be given to a lot of punishment in certain cases, is that of *efficacy with respect to disablement*, or, as it might be styled more briefly, *disabling efficacy*. This is a property which may be given in perfection to a lot of punishment; and that with much greater certainty than the property of subserviency to reformation. The inconvenience is, that this property is apt, in general, to run counter to that of frugality: there being, in most cases, no certain way of disabling a man from doing mischief, without, at the same time, disabling him, in a great measure, from doing good, either to himself or others. The mischief therefore of the offence must be so great as to demand a very considerable lot of punishment, for the purpose of example, before it can warrant the application of a punishment equal to that which is necessary for the purpose of disablement.

XIX. *—is most conspicuous in capital punishment.* The punishment, of which the efficacy in this way is the greatest, is evidently that of death. In this case the efficacy of it is certain. This accordingly is the punishment peculiarly adapted to those cases in which the name of the offender, so long as he lives, may be sufficient to keep a whole nation in a flame. This will now and then be the case with competitors for the sovereignty, and leaders of the factions in civil wars: though, when applied to offences of so questionable a nature, in which the question concerning criminality turns more upon success than any thing else; an infliction of this sort may seem more to savour of hostility than punishment. At the same time this punishment, it is evident, is in an eminent degree *unfrugal*; which forms one among the many objections there are against the use of it, in any but very extraordinary cases.[208]

XX. *Other punishments in which it is to be found.* In ordinary cases the purpose may be sufficiently answered by one or other of the various kinds of confinement and banishment: of which, imprisonment is the most strict and effica-

cious. For when an offence is so circumstanced that it cannot be committed but in a certain place, as is the case, for the most part, with offences against the person, all the law has to do, in order to disable the offender from committing it, is to prevent his being in that place. In any of the offences which consist in the breach or the abuse of any kind of trust, the purpose may be compassed at a still cheaper rate, merely by forfeiture of the trust: and in general, in any of those offences which can only be committed under favour of some relation in which the offender stands with reference to any person, or sets of persons, merely by forfeiture of that relation: that is, of the right of continuing to reap the advantages belonging to it. This is the case, for instance, with any of those offences which consist in an abuse of the privileges of marriage, or of the liberty of carrying on any lucrative or other occupation.

XXI. *Property* 9. *Subserviency to compensation.* The *ninth* property is that of *subserviency to compensation.* This property of punishment, if it be *vindictive* compensation that is in view, will, with little variation, be in proportion to the quantity: if *lucrative,* it is the peculiar and characteristic property of pecuniary punishment.

XXII. *Property* 10. *Popularity.* In the rear of all these properties may be introduced that of *popularity;* a very fleeting and indeterminate kind of property, which may belong to a lot of punishment one moment, and be lost by it the next. By popularity is meant the property of being acceptable, or rather not unacceptable, to the bulk of the people, among whom it is proposed to be established. In strictness of speech, it should rather be called *absence of unpopularity:* for it cannot be expected, in regard to such a matter as punishment, that any species or lot of it should be positively acceptable and grateful to the people: it is sufficient, for the most part, if they have no decided aversion to the thoughts of it. Now the property of characteristicalness, above noticed, seems to go as far towards conciliating the approbation of the people to a mode of punishment, as any; insomuch that popularity may be regarded as a kind of secondary quality, depending upon that of characteristicalness.[204] The use of inserting this prop-

erty in the catalogue, is chiefly to make it serve by way of memento to the legislator not to introduce, without a cogent necessity, any mode or lot of punishment, towards which he happens to perceive any violent aversion entertained by the body of the people.

XXIII. *Mischiefs resulting from the unpopularity of a punishment—discontent among the people, and weakness in the law.* The effects of unpopularity in a mode of punishment are analogous to those of unfrugality. The unnecessary pain which denominates a punishment unfrugal, is most apt to be that which is produced on the part of the offender. A portion of superfluous pain is in like manner produced when the punishment is unpopular: but in this case it is produced on the part of persons altogether innocent, the people at large. This is already one mischief; and another is, the weakness which it is apt to introduce into the law. When the people are satisfied with the law, they voluntarily lend their assistance in the execution: when they are dissatisfied, they will naturally withhold that assistance; it is well if they do not take a positive part in raising impediments. This contributes greatly to the uncertainty of the punishment; by which, in the first instance, the frequency of the offence receives an increase. In process of time that deficiency, as usual, is apt to draw on an increase in magnitude: an addition of a certain quantity which otherwise would be *needless*.[205]

XXIV. *This property supposes a prejudice which the legislator ought to cure.* This property, it is to be observed, necessarily supposes, on the part of the people, some prejudice or other, which it is the business of the legislator to endeavour to correct. For if the aversion to the punishment in question were grounded on the principle of utility, the punishment would be such as, on other accounts, ought not to be employed: in which case its popularity or unpopularity would never be worth drawing into question. It is properly therefore a property not so much of the punishment as of the people: a disposition to entertain an unreasonable dislike against an object which merits their approbation. It is the sign also of another property, to wit, indolence or weakness, on the part of the legislator: in suffering the people, for the want of

some instruction, which ought to be and might be given them, to quarrel with their own interest. Be this as it may, so long as any such dissatisfaction subsists, it behoves the legislator to have an eye to it, as much as if it were ever so well grounded. Every nation is liable to have its prejudices and its caprices, which it is the business of the legislator to look out for, to study, and to cure.[206]

XXV. *Property* 11. *Remissibility*. The eleventh and last of all the properties that seem to be requisite in a lot of punishment, is that of *remissibility*.[207] The general presumption is, that when punishment is applied, punishment is needful: that it ought to be applied, and therefore cannot want to be *remitted*. But in very particular, and those always very deplorable cases, it may by accident happen otherwise. It may happen that punishment shall have been inflicted, where, according to the intention of the law itself, it ought not to have been inflicted: that is, where the sufferer is innocent of the offence. At the time of the sentence passed he appeared guilty: but since then, accident has brought his innocence to light. This being the case, so much of the destined punishment as he has suffered already, there is no help for. The business is then to free him from as much as is yet to come. But *is* there any yet to come? There is very little chance of there being any, unless it be so much as consists of *chronical* punishment: such as imprisonment, banishment, penal labour, and the like. So much as consists of *acute* punishment, to wit where the penal process itself is over presently, however permanent the punishment may be in its effects, may be considered as *irremissible*. This is the case, for example, with whipping, branding, mutilation, and capital punishment. The most perfectly irremissible of any is capital punishment. For though other punishments cannot, when they are over, be remitted, they may be compensated for; and although the unfortunate victim cannot be put into the same condition, yet possibly means may be found of putting him into as good a condition, as he would have been in if he had never suffered. This may in general be done very effectually where the punishment has been no other than pecuniary.

There is another case in which the property of remissibility

may appear to be of use: this is, where, although the offender has been justly punished, yet on account of some good behaviour of his, displayed at a time subsequent to that of the commencement of the punishment, it may seem expedient to remit a part of it. But this it can scarcely be, if the proportion of the punishment is, in other respects, what it ought to be. The purpose of example is the more important object, in comparison of that of reformation.[208] It is not very likely, that less punishment should be required for the former purpose than for the latter. For it must be rather an extraordinary case, if a punishment, which is sufficient to deter a man who has only thought of it for a few moments, should not be sufficient to deter a man who has been feeling it all the time. Whatever, then, is required for the purpose of example, must abide at all events: it is not any reformation on the part of the offender, that can warrant the remitting of any part of it: if it could, a man would have nothing to do but to reform immediately, and so free himself from the greatest part of that punishment which was deemed necessary. In order, then, to warrant the remitting of any part of a punishment upon this ground, it must first be supposed that the punishment at first appointed was more than was necessary for the purpose of example, and consequently that a part of it was *needless* upon the whole. This, indeed, is apt enough to be the case, under the imperfect systems that are as yet on foot: and therefore, during the continuance of those systems, the property of remissibility may, on this second ground likewise, as well as on the former, be deemed a useful one. But this would not be the case in any new-constructed system, in which the rules of proportion above laid down should be observed. In such a system, therefore, the utility of this property would rest solely on the former ground.

XXVI. *To obtain all these properties, punishments must be mixed.* Upon taking a survey of the various possible modes of punishment, it will appear evidently, that there is not any one of them that possesses all the above properties in perfection. To do the best that can be done in the way of punishment, it will therefore be necessary, upon most occasions, to compound them, and make them into complex

lots, each consisting of a number of different modes of punishment put together: the nature and proportions of the constituent parts of each lot being different, according to the nature of the offence which it is designed to combat.

XXVII. *The foregoing properties recapitulated.* It may not be amiss to bring together, and exhibit in one view, the eleven properties above established. They are as follows:

Two of them are concerned in establishing a proper proportion between a single offence and its punishment; viz.

1. Variability.
2. Equability.

One, in establishing a proportion, between more offences than one, and more punishments than one; viz.

3. Commensurability.

A fourth contributes to place the punishment in that situation in which alone it can be efficacious; and at the same time to be bestowing on it the two farther properties of exemplarity and popularity; viz.

4. Characteristicalness.

Two others are concerned in excluding all useless punishment; the one indirectly, by heightening the efficacy of what is useful; the other in a direct way; viz.

5. Exemplarity.
6. Frugality.

Three others contribute severally to the three inferior ends of punishment; viz.

7. Subserviency to reformation.
8. Efficacy in disabling.
9. Subserviency to compensation.

Another property tends to exclude a collateral mischief, which a particular mode of punishment is liable accidentally to produce; viz.

10. Popularity.

The remaining property tends to palliate a mischief, which all punishment, as such, is liable accidentally to produce; viz.

11. Remissibility.

The properties of commensurability, characteristicalness, exemplarity, subserviency to reformation, and efficacy in disabling, are more particularly calculated to augment the *profit*

which is to be made by punishment: frugality, subserviency to compensation, popularity, and remissibility, to diminish the *expense*: variability and equability are alike subservient to both those purposes.

XXVIII. *Connection of this with the ensuing chapter.* We now come to take a general survey of the system of *offences:* that is, of such *acts* to which, on account of the mischievous *consequences* they have a *natural* tendency to produce, and in the view of putting a stop to those consequences, it may be proper to annex a certain *artificial* consequence, consisting of punishment, to be inflicted on the authors of such acts, according to the principles just established.

CHAPTER XVI.

DIVISION OF OFFENCES.

§ 1. *Classes of Offences.*

I. *Distinction between what are offences and what ougl to be.*[209] It is necessary, at the outset, to make a distinctio between such acts as *are* or *may* be, and such as *ought* to b offences. Any act *may* be an offence, which they whom th community are in the habit of obeying shall be pleased t make one: that is, any act which they shall be pleased t prohibit or to punish. But, upon the principle of utilit such acts alone *ought* to be made offences, as the good c the community requires should be made so.

II. *No act ought to be an offence but. what is detrimenta to the community.* The good of the community cannot r quire, that any act should be made an offence, which is nc liable, in some way or other, to be detrimental to th community. For in the case of such an act, all punishmer is *groundless.*[210]

III. *To be so, it must be detrimental to some one or mor of its members.* But if the whole assemblage of any numbe of individuals be considered as constituting an imaginar compound *body*, a community or political state; any ac that is detrimental to any one or more of those *member* is, as to so much of its effects, detrimental to the *state.*

IV. *These may be assignable or not.* An act cannot b detrimental to a *state*, but by being detrimental to some on or more of the *individuals* that compose it. But these ind viduals may either be *assignable*[211] or *unassignable.*

V. *If assignable, the offender himself, or others.* Whe

there is any assignable individual to whom an offence is detrimental, that person may either be a person *other* than the offender, or the offender *himself*.

VI. *Class* 1. *Private offences.* Offences that are detrimental, in the first instance, to assignable persons other than the offender, may be termed by one common name, *offences against individuals*. And of these may be composed the 1st class of offences. To contrast them with offences of the 2nd and 4th classes, it may also sometimes be convenient to style them *private* offences. To contrast them at the same time with offences of the 3rd class, they may be styled *private extra-regarding* offences.

VII. *Class* 2. *Semi-public offences.* When it appears, in general, that there are persons to whom the act in question may be detrimental, but such persons cannot be individually assigned, the circle within which it appears that they may be found, is either of less extent than that which comprises the whole community, or not. If of less, the persons comprised within this lesser circle may be considered for this purpose as composing a body of themselves; comprised within, but distinguishable from, the greater body of the whole community. The circumstance that constitutes the union between the members of this lesser body, may be either their residence within a particular place, or, in short, any other less explicit principle of union, which may serve to distinguish them from the remaining members of the community. In the first case, the act may be styled an *offence against a neighbourhood:* in the second, an offence against a particular *class* of persons in the community. Offences, then, against a class or neighbourhood, may, together, constitute the 2nd class of offences.[212] To contrast them with private offences on the one hand, and public on the other, they may also be styled *semi-public* offences.

VIII. *Class* 3. *Self-regarding offences.* Offences, which in the first instance are detrimental to the offender himself, and to no one else, unless it be by their being detrimental to himself, may serve to compose a third class. To contrast them the better with offences of the first, second, and fourth classes, all which are of a *transitive* nature, they might be

styled *intransitive* [213] offences; but still better, *self-regarding*.

IX. *Class 4. Public offences.* The fourth class may be composed of such acts as ought to be made offences, on account of the distant mischief which they threaten to bring upon an unassignable indefinite multitude of the whole number of individuals, of which the community is composed: although no particular individual should appear more likely to be a sufferer by them than another. These may be called *public* offences, or offences against the *state*.

X. *Class 5.* Multiform *offences, viz. 1. Offences by falsehood. 2. Offences against trust.* A fifth class, or appendix, may be composed of such acts as, according to the circumstances in which they are committed, and more particularly according to the purposes to which they are applied, may be detrimental in any one of the ways in which the act of one man can be detrimental to another. These may be termed *multiform*, or *heterogeneous offences*.[214] Offences that are in this case may be reduced to two great heads: 1. Offences by *falsehood:* and 2. Offences against *trust*.

§ 2. *Divisions and sub-divisions.*

XI. *Divisions of Class 1.* (1) *Offences against person;* (2) *Property;* (3) *Reputation;* (4) *Condition;* (5) *Person and property;* (6) *Person and reputation.* Let us see by what method these classes may be farther sub-divided. First, then, with regard to offences against individuals.

In the present period of existence, a man's being and well-being, his happiness and his security; in a word, his pleasures and his immunity from pains, are all dependent, more or less, in the first place, upon his *own person;* in the next place, upon the *exterior objects* that surround him. These objects are either *things*, or other *persons*. Under one or other of these classes must evidently be comprised every sort of exterior object, by means of which his interest can be affected. If then, by means of any offence, a man should on any occasion become a sufferer, it must be in one or other of two ways: 1. *absolutely*, to wit, immediately in his own person; in which case the offence may be said to be

an offence against his person: or, 2. *relatively*, by reason of some *material* relation [215] which the before mentioned exterior objects may happen to bear, in the way of *causality* (see ch. vii. Actions, par. 24) to his happiness. Now in as far as a man is in a way to derive either happiness or security from any object which belongs to the class of *things*, such thing is said to be his *property*, or at least he is said to have a *property* or an *interest* therein: an offence, therefore, which tends to lessen the facility he might otherwise have of deriving happiness or security from an object which belongs to the class of things, may be styled an offence against his property. With regard to persons, in as far as, from objects of this class, a man is in a way to derive happiness or security, it is in virtue of their *services*: in virtue of some services, which, by one sort of inducement or another, they may be disposed to render him.[216] Now, then, take any man, by way of example, and the disposition, whatever it may be, which he may be in to render you service, either has no other connection to give birth or support to it, than the general one which binds him to the whole species, or it has some other connection more particular. In the latter case, such a connection may be spoken of as constituting, in your favour, a kind of fictitious or incorporeal object of property, which is styled your *condition*. An offence, therefore, the tendency of which is to lessen the facility you might otherwise have of deriving happiness from the services of a person thus specially connected with you, may be styled an offence against your condition in life, or simply against your condition. Conditions in life must evidently be as various as the relations by which they are constituted. This will be seen more particularly farther on. In the mean time those of husband, wife, parent, child, master, servant, citizen of such or such a city, natural-born subject of such or such a country, may answer the purpose of examples.

Where there is no such particular connection, or (what comes to the same thing) where the disposition, whatever it may be, which a man is in to render you service, is not considered as depending upon such connection, but simply upon the good-will he bears to you; in such case, in order to express

what chance you have of deriving a benefit from his services, a kind of fictitious object of property is spoken of, as being constituted in your favour, and is called your *reputation*. An offence, therefore, the tendency of which is to lessen the facility you might otherwise have had of deriving happiness or security from the services of persons at large, whether connected with you or not by any special tie, may be styled an offence against your *reputation*. It appears, therefore, that if by any offence an individual becomes a sufferer, it must be in one or other of the four points above mentioned; viz. his person, his property, his condition in life, or his reputation. These sources of distinction, then, may serve to form so many subordinate divisions. If any offences should be found to affect a person in more than one of these points at the same time, such offences may respectively be put under so many separate divisions; and such compound divisions may be subjoined to the preceding simple ones. The several divisions (simple and compound together) which are herein-after established, stand as follows: 1. Offences against person. 2. Offences against reputation. 3. Offences against property. 4. Offences against condition. 5. Offences against person and property together. 6. Offences against person and reputation together.[217]

XII. *Divisions of Class 2. 1. Offences through calamity.* Next with regard to semi-public offences. Pain, considered with reference to the time of the act from which it is liable to issue, must, it is evident, be either present, past, or future. In as far as it is either present or past, it cannot be the result of any act which comes under the description of a semi-public offence: for if it be present or past, the individuals who experience, or who have experienced, it are *assignable*.[218] There remains that sort of mischief, which, if it ever come to exist at all, is as yet but future: mischief, thus circumstanced, takes the name of *danger*.[219] Now, then, when by means of the act of any person a whole neighbourhood, or other class of persons, are exposed to danger, this danger must either be *intentional* on his part, or *unintentional*.[220] If unintentional, such danger, when it is converted into actual mischief, takes the name of a *calamity:* offences, productive of

such danger, may be styled *semi-public offences operating through calamity;* or, more briefly, *offences through calamity.* If the danger be intentional, insomuch that it might be produced, and might convert itself into actual mischief, without the concurrence of any calamity, it may be said to originate in *mere delinquency*: offences, then, which, without the concurrence of any calamity, tend to produce such danger as disturbs the security of a local, or other subordinate class of persons, may be styled *semi-public offences operating merely by delinquency,* or more briefly, *offences of mere delinquency.*

XIII. *Sub-divisions of offences through calamity, dismissed.* With regard to any farther sub-divisions, offences through calamity will depend upon the nature of the several calamities to which man, and the several things that are of use to him, stand exposed. These will be considered in another place.[221]

XIV. 2. *Offences of mere delinquency, how they correspond with the divisions of private offences.* Semi-public offences of mere delinquency will follow the method of division applied to offences against individuals. It will easily be conceived, that whatever pain or inconvenience any given individual may be made to suffer, to the danger of that pain or inconvenience may any number of individuals, assignable or not assignable, be exposed. Now there are four points or articles, as we have seen, in respect to which an individual may be made to suffer pain or inconvenience. If then, with respect to any one of them, the connection of causes and effects is such, that to the danger of suffering in that article a number of persons, who individually are not assignable, may, by the delinquency of one person, be exposed, such article will form a ground of distinction on which a particular subdivision of semi-public offences may be established: if, with respect to any such article, no such effect can take place, that ground of distinction will lie for the present unoccupied: ready, however, upon any change of circumstances, or in the manner of viewing the subject, to receive a correspondent subdivision of offences, if ever it should seem necessary that any such offences should be created.

XV. *Divisions of Class 3 coincide with those of Class 1.*

We come next to self-regarding offences; or, more properly, to acts productive in the first instance of no other than a self-regarding mischief: acts which, if in any instance it be thought fit to constitute them offences, will come under the denomination of offences against one's self. This class will not for the present give us much trouble. For it is evident that in whatever points a man is vulnerable by the hand of another, in the same points may he be conceived to be vulnerable by his own. Whatever divisions therefore will serve for the first class, the same will serve for this. As to the questions, What acts are productive of a mischief of this stamp; and, among such as *are*, which it may, and which it may not be *worth while*[222] to treat upon the footing of offences: these are points, the latter of which at least is too unsettled and too open to controversy, to be laid down with that degree of confidence which is implied in the exhibition of properties which are made use of as the groundwork of an arrangement. Properties for this purpose ought to be such as show themselves at first glance, and appear to belong to the subject beyond dispute.

XVI. *Divisions of Class* 4. Public offences may be distributed under eleven divisions.[223] 1. Offences against *external* security. 2. Offences against *justice*. 3. Offences against the *preventive* branch of the *police*. 4. Offences against the public *force*. 5. Offences against the *positive* increase of the national *felicity*. 6. Offences against the public *wealth*. 7. Offences against *population*. 8. Offences against the *national wealth*. 9. Offences against the *sovereignty*. 10. Offences against *religion*. 11. Offences against the national *interest* in general. The way in which these several sorts of offences connect with one another, and with the interest of the public, that is, of an unassignable multitude of the individuals of which that body is composed, may be thus conceived.

XVII. *Connection of the nine first divisions one with another*. Mischief by which the interest of the public as above defined may be affected, must, if produced at all, be produced either by means of an influence exerted on the operations of government, or by other means, without the exertion of such influence.[224] To begin with the latter case: mischief, be it

what it will, and let it happen to whom it will, must be produced either by the unassisted powers of the agent in question, or by the instrumentality of some other agents. In the latter case, these agents will be either persons or things. Persons again must be either not members of the community in question, or members. Mischief produced by the instrumentality of persons, may accordingly be produced by the instrumentality either of *external* or of *internal* adversaries. Now when it is produced by the agent's own unassisted powers, or by the instrumentality of internal adversaries, or only by the instrumentality of things, it is seldom that it can show itself in any other shape (setting aside any influence it may exert on the operations of government) than either that of an offence against assignable individuals, or that of an offence against a local or other subordinate class of persons. If there should be a way in which mischief can be produced, by any of these means, to individuals altogether unassignable, it will scarcely be found conspicuous or important enough to occupy a title by itself: it may accordingly be referred to the miscellaneous head of *offences against the national interest in general.*[225] The only mischief, of any considerable account, which can be made to impend indiscriminately over the whole number of members in the community, is that complex kind of mischief which results from a state of war, and is produced by the instrumentality of external adversaries; by their being provoked, for instance, or invited, or encouraged to invasion. In this way may a man very well bring down a mischief, and that a very heavy one, upon the whole community in general, and that without taking a part in any of the injuries which came in consequence to be offered to particular individuals.

Next with regard to the mischief which an offence may bring upon the public by its influence on the operations of the government. This it may occasion either, 1. In a more immediate way, by its influence on those *operations* themselves: 2. In a more remote way, by its influence on the *instruments* by or by the help of which those operations should be performed: or 3. In a more remote way still, by its influence on the *sources* from whence such instruments are to be derived. First then, as to the operations of government,

the tendency of these, in as far as it is conformable to what on the principle of utility it ought to be, is in every case either to avert mischief from the community, or to make an addition to the sum of positive good.[226] Now mischief, we have seen, must come either from external adversaries, from internal adversaries, or from calamities. With regard to mischief from external adversaries, there requires no further division. As to mischief from internal adversaries, the expedients employed for averting it may be distinguished into such as may be applied *before* the discovery of any mischievous design in particular, and such as cannot be employed but in consequence of the discovery of some such design: the former of these are commonly referred to a branch which may be styled the *preventive* branch of the *police:* the latter to that of justice.[227] Secondly, As to the *instruments* which government, whether in the averting of evil or in the producing of positive good, can have to work with, these must be either *persons* or *things*. Those which are destined to the particular function of guarding against mischief from adversaries in general, but more particularly from external adversaries,[228] may be distinguished from the rest under the collective appellation of the *public military force,* and, for conciseness' sake, the *military force*. The rest may be characterised by the collective appellation of the *public wealth*. Thirdly, with regard to the sources or funds from whence these instruments, howsoever applied, must be derived, such of them as come under the denomination of *persons* must be taken out of the whole number of persons that are in the community, that is, out of the total *population* of the state: so that the greater the population, the greater may *cæteris paribus* be this branch of the public wealth; and the less, the less. In like manner, such as come under the denomination of *things* may be, and most of them commonly are, taken out of the sum total of those things which are the separate properties of the several members of the community: the sum of which properties may be termed *the national wealth:*[229] so that the greater the national wealth, the greater *cæteris paribus* may be this remaining branch of the public wealth; and the less, the less. It is here to be observed, that if the influence exerted on any occa-

sion by any individual over the operations of the government be pernicious, it must be in one or other of two ways: 1. By causing, or tending to cause, operations *not* to be performed which *ought* to be performed; in other words, by *impeding* the operations of government. Or, 2. By causing operations to *be* performed which ought *not* to be performed; in other words, by *misdirecting* them. Lastly, to the total assemblage of the persons by whom the several political operations above mentioned come to be performed, we set out with applying the collective appellation of *the government*. Among these persons there *commonly* [230] is some one person, or body of persons whose office it is to assign and distribute to the rest their several departments, to determine the conduct to be pursued by each in the performance of the particular set of operations that belongs to him, and even upon occasion to exercise his function in his stead. Where there is any such person, or body of persons, *he* or *it* may, according as the turn of the phrase requires, be termed *the sovereign*, or the *sovereignty*. Now it is evident, that to impede or misdirect the operations of the sovereign, as here described, may be to impede or misdirect the operations of the several departments of government as described above.

From this analysis, by which the connection between the several above-mentioned heads of offences is exhibited, we may now collect a definition for each article. By *offences against external security*, we may understand such offences whereof the tendency is to bring upon the public a mischief resulting from the hostilities of foreign adversaries. By *offences against justice*, such offences whereof the tendency is to impede or misdirect the operations of that power which is employed in the business of guarding the public against the mischiefs resulting from the delinquency of internal adversaries, as far as it is to be done by expedients, which do not come to be applied in any case till *after* the discovery of some particular design of the sort of those which they are calculated to prevent. By *offences against the preventive branch of the police*, such offences whereof the tendency is to impede or misdirect the operations of that power which is employed in guarding against mischiefs resulting from the delinquency of

internal adversaries, by expedients that come to be applied *beforehand*; or of that which is employed in guarding against the mischiefs that might be occasioned by physical calamities. By *offences against the public force*, such offences whereof the tendency is to impede or misdirect the operations of that power which is destined to guard the public from the mischiefs which may result from the hostility of foreign adversaries, and, in case of necessity, in the capacity of ministers of justice, from mischiefs of the number of those which result from the delinquency of internal adversaries.

By *offences against the increase of the national felicity*, such offences whereof the tendency is to impede or misapply the operations of those powers that are employed in the conducting of various establishments, which are calculated to make, in so many different ways, a positive addition to the stock of public happiness. By *offences against the public wealth*, such offences whereof the tendency is to diminish the amount or misdirect the application of the money, and other articles of wealth, which the government reserves as a fund, out of which the stock of instruments employed in the service above mentioned may be kept up. By *offences against population*, such offences whereof the tendency is to diminish the numbers or impair the political value of the sum total of the members of the community. By *offences against the national wealth*, such offences whereof the tendency is to diminish the quantity, or impair the value, of the things which compose the separate properties or estates of the several members of the community.

XVIII. *Connection of offences against religion with the foregoing ones.* In this deduction it may be asked, what place is left for *religion?* This we shall see presently. For combating the various kinds of offences above enumerated, that is, for combating all the offences (those not excepted which we are now about considering) which it is in man's nature to commit, the state has two great engines, *punishment* and *reward:* punishment, to be applied to all, and upon all ordinary occasions: reward, to be applied to a few, for particular purposes, and upon extraordinary occasions. But whether or no

a man has done the act which renders him an object meet for punishment or reward, the eyes of those, whosoever they be, to whom the management of these engines is entrusted cannot always see, nor, where it is punishment that is to be administered, can their hands be always sure to reach him. To supply these deficiencies in point of power, it is thought necessary, or at least *useful* (without which the *truth* of the doctrine would be nothing to the purpose), to inculcate into the minds of the people the belief of the existence of a power applicable to the same purposes, and not liable to the same deficiencies: the power of a supreme invisible being, to whom a disposition of contributing to the same ends to which the several institutions already mentioned are calculated to contribute, must for this purpose be ascribed. It is of course expected that this power will, at one time or other, be employed in the promoting of those ends: and to keep up and strengthen this expectation among men, is spoken of as being the employment of a kind of allegorical personage, feigned, as before,[231] for convenience of discourse, and styled *religion*. To diminish, then, or misapply the influence of religion, is *pro tanto* to diminish or misapply what power the state has of combating with effect any of the before-enumerated kinds of offences; that is, all kinds of offences whatsoever. Acts that appear to have this tendency may be styled *offences against religion*. Of these then may be composed the tenth division of the class of offences against the state.[232]

XIX. *Connection of offences against the national interest in general with the rest*. If there be any acts which appear liable to affect the state in any one or more of the above ways, by operating in prejudice of the external security of the state, or of its internal security; of the public force; of the increase of the national felicity; of the public wealth; of the national population; of the national wealth; of the sovereignty; or of religion; at the same time that it is not clear in which of all these ways they will affect it most, nor but that, according to contingencies, they may affect it in one of these ways only or in another; such acts may be collected together under a miscellaneous division by themselves, and styled *offences against*

the national interest in general. Of these then may be composed the eleventh and last division of the class of offences against the state.

XX. *Sub-divisions of Class 5 enumerated. Divisions of offences by falsehood*. We come now to class the fifth: consisting of *multiform* offences. These, as has been already intimated, are either offences by *falsehood*, or offences concerning *trust*. Under the head of offences by falsehood, may be comprehended, 1. Simple falsehoods. 2. Forgery. 3. Personation. 4. Perjury.[283] Let us observe in what particulars these four kinds of falsehood agree, and in what they differ.

XXI. *Offences by falsehood, in what they agree with one another*. Offences by falsehood, however diversified in other particulars, have this in common, that they consist in some abuse of the faculty of discourse, or rather, as we shall see hereafter, of the faculty of influencing the sentiment of belief in other men,[284] whether by discourse or otherwise. The use of discourse is to influence belief, and that in such manner as to give other men to understand that things are as they are really. Falsehoods, of whatever kind they be, agree in this: that they give men to understand that things are otherwise than as in reality they are.

XXII. —*in what they differ*. Personation, forgery, and perjury, are each of them distinguished from other modes of uttering falsehood by certain special circumstances. When a falsehood is not accompanied by any of those circumstances, it may be styled simple falsehood. These circumstances are, 1. The *form* in which the falsehood is uttered. 2. The circumstance of its relating or not to the identity of the *person* of him who utters it. 3. The solemnity of the *occasion* on which it is uttered.[285] The particular application of these distinctive characters may more commodiously be reserved for another place.[286]

XXIII. *Sub-divisions of offences by falsehood are determined by the divisions of the preceding classes*. We come now to the sub-divisions of offences by falsehood. These will bring us back into the regular track of analysis, pursued, without deviation, through the four preceding classes.

By whatever means a mischief is brought about, whether

falsehood be or be not of the number, the individuals liable to be affected by it must either be assignable or unassignable. If assignable, there are but four material articles in respect to which they can be affected: to wit, their persons, their properties, their reputations, and their conditions in life. The case is the same, if, though unassignable, they are comprisable in any class subordinate to that which is composed of the whole number of members of the state. If the falsehood tend to the detriment of the whole state, it can only be by operating in one or other of the characters, which every act that is an offence against the state must assume; viz. that of an offence against external security, against justice, against the preventive branch of the police, against the public force, against the increase of the national felicity, against the public wealth, against the national population, against the national wealth, against the sovereignty of the state, or against its religion.

XXIV. *Offences of this class in some instances change their names; in others not.* It is the common property, then, of the offences that belong to this division, to run over the same ground that is occupied by those of the preceding classes. But some of them, as we shall see, are apt, on various occasions, to drop or change the names which bring them under this division: this is chiefly the case with regard to simple falsehoods. Others retain their names unchanged; and even thereby supersede the names which would otherwise belong to the offences which they denominate: this is chiefly the case with regard to personation, forgery, and perjury. When this circumstance then, the circumstance of falsehood, intervenes, in some cases the name which takes the lead is that which indicates the offence by its effect; in other cases, it is that which indicates the expedient or instrument as it were by the help of which the offence is committed. Falsehood, take it by itself, consider it as not being accompanied by any other material circumstances, nor therefore productive of any material effects, can never, upon the principle of utility, constitute any offence at all. Combined with other circumstances, there is scarce any sort of pernicious effect which it may not be instrumental in producing. It is therefore rather in compliance with the laws of language, than in considera-

tion of the nature of the things themselves, that falsehoods are made separate mention of under the name and in the character of distinct offences. All this would appear plain enough, if it were now a time for entering into particulars: but that is what cannot be done, consistently with any principle of order or convenience, until the inferior divisions of those other classes shall have been previously exhibited.

XXV. *A trust—what.* We come now to offences against trust. A trust is, where there is any particular act which one party, in the exercise of some *power*, or some *right*,[287] which is conferred on him, is bound to perform for the benefit of another. Or, more fully, thus: A party is said to be invested with a trust, when, being invested with a *power*, or with a *right*, there is a certain behaviour which, in the exercise of that power, or of that right, he is bound to maintain for the benefit of some other party. In such case, the party first mentioned is styled a trustee: for the other party, no name has ever yet been found: for want of a name, there seems to be no other resource than to give a new and more extensive sense to the word *beneficiary*, or to say at length *the party to be benefited*.[288]

The trustee is also said to have a trust *conferred* or *imposed* upon him, to be *invested* with a trust, to have had a trust given him to execute, to perform, to discharge, or to fulfil. The party to be benefited, is said to have a trust established or created in his favour: and so on through a variety of other phrases.

XXVI. *Offences against trust, condition, and property, why ranked under separate divisions.* Now it may occur, that a *trust* is oftentimes spoken of as a species of *condition*:[289] that a trust is also spoken of as a species of *property*: and that a condition itself is also spoken of in the same light. It may be thought, therefore, that in the first class, the division of offences against condition should have been included under that of the offences against property: and that at any rate, so much of the fifth class now before us as contains offences against trust, should have been included under one or other of those two divisions of the first class. But upon examination it will appear, that no one of these divisions could with con-

venience, nor even perhaps with propriety, have been included under either of the other two. It will appear at the same time, that there is an intimate connection subsisting amongst them all: insomuch that of the lists of the offences to which they are respectively exposed, any one may serve in great measure as a model for any other. There are certain offences to which all trusts as such are exposed: to all these offences every sort of condition will be found exposed: at the same time that particular species of the offences against trust will, upon their application to particular conditions, receive different particular denominations. It will appear also, that of the two groups of offences into which the list of those against trust will be found naturally to divide itself, there is one, and but one, to which property, taken in its proper and more confined sense, stands exposed: and that these, in their application to the subject of property, will be found susceptible of distinct modifications, to which the usage of language, and the occasion there is for distinguishing them in point of treatment, make it necessary to find names.

In the first place, as there are, or at least may be (as we shall see) conditions which are not trusts,[240] so there are trusts of which the idea would not be readily and naturally understood to be included under the word *condition*: add to which, that of those conditions which do include a trust, the greater number include other ingredients along with it: so that the idea of a condition, if on the one hand it stretches beyond the idea of a trust, does on the other hand fall short of it. Of the several sorts of trusts, by far the most important are those in which it is the public that stands in the relation of *beneficiary*. Now these trusts, it should seem, would hardly present themselves at first view upon the mention of the word *condition*. At any rate, what is more material, the most important of the offences against these kinds of trust would not seem to be included under the denomination of offences against condition. The offences which by this latter appellation would be brought to view, would be such only as seemed to affect the interests of an individual: of him, for example, who is considered as being invested with that condition. But in offences against public trust, it is the influence they have

on the interests of the public that constitutes by much the most material part of their pernicious tendency: the influence they have on the interests of any individual, the only part of their influence which would be readily brought to view by the appellation of offences against condition, is comparatively as nothing. The word trust directs the attention at once to the interests of that party for whom the person in question is trustee: which party, upon the addition of the epithet public, is immediately understood to be the body composed of the whole assemblage, or an indefinite portion of the whole assemblage of the members of the state. The idea presented by the words *public trust* is clear and unambiguous: it is but an obscure and ambiguous garb that that idea could be expressed in by the words *public condition*. It appears, therefore, that the principal part of the offences, included under the denomination of offences against trust, could not, commodiously at least, have been included under the head of offences against condition.

It is evident enough, that for the same reasons neither could they have been included under the head of offences against property. It would have appeared preposterous, and would have argued a total inattention to the leading principle of the whole work, the principle of utility, to have taken the most mischievous and alarming part of the offences to which the public stands exposed, and forced them into the list of offences against the property of an individual: of that individual, to wit, who in that case would be considered as having in him the property of that public trust, which by the offences in question is affected.

Nor would it have been less improper to have included conditions, all of them, under the head of property: and thereby the whole catalogue of offences against condition, under the catalogue of offences against property. True it is, that there are offences against condition, which perhaps with equal propriety, and without any change in their nature, might be considered in the light of offences against property: so extensive and so vague are the ideas that are wont to be annexed to both these objects. But there are other offences which though with unquestionable propriety they might be

referred to the head of offences against condition, could not, without the utmost violence done to language, be forced under the appellation of offences against property. Property, considered with respect to the proprietor, implies invariably a benefit, and nothing else: whatever obligations or burthens may, by accident, stand annexed to it, yet in itself it can never be otherwise than beneficial. On the part of the proprietor, it is created not by any commands that are laid on him, but by his being left free to do with such or such an article as he likes. The obligations it is created by, are in every instance laid upon other people. On the other hand, as to conditions, there are several which are of a mixed nature, importing as well a burthen to him who stands invested with them as a benefit: which indeed is the case with those conditions which we hear most of under that name, and which make the greatest figure.

There are even conditions which import nothing but burthen, without any spark of benefit. Accordingly, when between two parties there is such a relation, that one of them stands in the place of an object of property with respect to the other; the word *property* is applied only on one side; but the word *condition* is applied alike to both: it is but one of them that is said on that account to be possessed of a property; but both of them are alike spoken of as being possessed of or being invested with a condition: it is the master alone that is considered as possessing a property, of which the servant, in virtue of the services he is bound to render, is the object: but the servant, not less than the master, is spoken of as possessing or being invested with a condition.

The case is, that if a man's condition is ever spoken of as constituting an article of his *property*, it is in the same loose and indefinite sense of the word in which almost every other offence that could be imagined might be reckoned into the list of offences against property. If the language indeed were in every instance, in which it made use of the phrase, *object of property*, perspicuous enough to point out under that appellation the material and really existent body, the *person* or the *thing* in which those acts terminate, by the performance of which the property is said to be *enjoyed*; if, in short, in the

import given to the phrase *object of property*, it made no other use of it than the putting it to signify what is now called a corporeal *object*, this difficulty and this confusion would not have occurred. But the import of the phrase *object of property*, and in consequence the import of the word *property*, has been made to take a much wider range. In almost every case in which the law does any thing for a man's benefit or advantage, men are apt to speak of it, on some occasion or other, as conferring on him a sort of property. At the same time, for one reason or other, it has in several cases been not practicable, or not agreeable, to bring to view, under the appellation of *the object of his property*, the thing in which the acts, by the performance of which the property is said to be enjoyed, have their termination, or the person in whom they have their commencement. Yet something which could be spoken of under that appellation was absolutely requisite.[241] The expedient then has been to create, as it were, on every occasion, an ideal being, and to assign to a man this ideal being for the object of his property: and these are the sort of objects to which men of science, in taking a view of the operations of the law in this behalf, came, in process of time, to give the name of *incorporeal*. Now of these incorporeal objects of property the variety is prodigious. Fictitious entities of this kind have been fabricated almost out of every thing: not *conditions* only (that of a trustee included), but even *reputation* have been of the number. Even *liberty* has been considered in this same point of view: and though on so many occasions it is contrasted with *property*, yet on other occasions, being reckoned into the catalogue of possessions, it seems to have been considered as a branch of property. Some of these applications of the words *property*, *object of property* (the last, for instance), are looked upon, indeed, as more figurative, and less proper than the rest: but since the truth is, that where the immediate object is incorporeal, they are all of them improper, it is scarce practicable any where to draw the line.

Notwithstanding all this latitude, yet, among the relations in virtue of which you are said to be possessed of a condition, there is one at least which can scarcely, by the most forced

construction, be said to render any other man, or any other thing, the object of your property. This is the right of persevering in a certain course of action; for instance, in the exercising of a certain trade. Now to confer on you this right, in a certain degree at least, the law has nothing more to do than barely to abstain from forbidding you to exercise it. Were it to go farther, and, for the sake of enabling you to exercise your trade to the greater advantage, prohibit others from exercising the like, then, indeed, persons might be found, who in a certain sense, and by a construction rather forced than otherwise, might be spoken of as being the objects of your property: viz. by being made to render you that sort of negative service which consists in the forbearing to do those acts which would lessen the profits of your trade. But the ordinary right of exercising any such trade or profession, as is not the object of a monopoly, imports no such thing; and yet, by possessing this right, a man is said to possess a condition: and by forfeiting it, to forfeit his condition.

After all, it will be seen, that there must be cases in which, according to the usage of language, the same offence may, with more or less appearance of propriety, be referred to the head of offences against condition, or that of offences against property, indifferently. In such cases the following rule may serve for drawing the line. Wherever, in virtue of your possessing a property, or being the object of a property possessed by another, you are characterised, according to the usage of language, by a particular name, such as master, servant, husband, wife, steward, agent, attorney, or the like, there the word *condition* may be employed in exclusion of the word *property*: and an offence in which, in virtue of your bearing such relation, you are concerned, either in the capacity of an offender, or in that of a party injured, may be referred to the head of offences against condition, and not to that of offences against property. To give an example: Being bound, in the capacity of land steward to a certain person, to oversee the repairing of a certain bridge, you forbear to do so: in this case, as the services you are bound to render are of the number of those which give occasion to the party, from whom they are due, to be spoken of under a certain generical

name, viz. that of land steward, the offence of withholding them may be referred to the class of offences against condition. But suppose that, without being engaged in that general and miscellaneous course of service, which with reference to a particular person would denominate you his land steward, you were bound, whether by usage or by contract, to render him that single sort of service which consists in the providing, by yourself or by others, for the repairing of that bridge: in this case, as there is not any such current denomination to which, in virtue of your being bound to render this service, you stand aggregated (for that of architect, mason, or the like, is not here in question), the offence you commit by withholding such service cannot with propriety be referred to the class of offences against condition: it can only therefore be referred to the class of offences against property.

By way of further distinction, it may be remarked, that where a man, in virtue of his being bound to render, or of others being bound to render him, certain services, is spoken of as possessing a condition, the assemblage of services is generally so considerable, in point of duration, as to constitute a course of considerable length, so as on a variety of occasions to come to be varied and repeated: and in most cases, when the condition is not of a domestic nature, sometimes for the benefit of one person, sometimes for that of another. Services which come to be rendered to a particular person on a particular occasion, especially if they be of short duration, have seldom the effect of occasioning either party to be spoken of as being invested with a condition. The particular occasional services which one man may come, by contract or otherwise, to be bound to render to another, are innumerably various: but the number of conditions which have names may be counted, and are, comparatively, but few.

If after all, notwithstanding the rule here given for separating conditions from articles of property, any object should present itself which should appear to be referable, with equal propriety, to either head, the inconvenience would not be material; since in such cases, as will be seen a little farther on, whichever appellation were adopted, the list of the offences,

to which the object stands exposed, would be substantially the same.

These difficulties being cleared up, we now proceed to exhibit an analytical view of the several possible offences against trust.

XXVII. *Offences against trust—their connection with each other.* Offences against trust may be distinguished, in the first place, into such as concern the existence of the trust in the hands of such or such a person, and such as concern the *exercise* of the functions that belong to it.[242] First then, with regard to such as relate to its existence. An offence of this description, like one of any other description, if an offence it ought to be, must to some person or other import a prejudice. This prejudice may be distinguished into two branches: 1. That which may fall on such persons as are or should be invested with the trust: 2. That which may fall on the persons for whose sake it is or should be instituted, or on other persons at large. To begin with the former of these branches. Let any trust be conceived. The consequences which it is in the nature of it to be productive of to the possessor, must, in as far as they are *material*,[243] be either of an advantageous or of a disadvantageous nature: in as far as they are advantageous, the trust may be considered as a *benefit* or privilege: in as far as they are disadvantageous, it may be considered as a *burthen*.[244] To consider it then upon the footing of a benefit. The trust either is of the number of those which ought by law to subsist;[245] that is, which the legislator meant should be established; or is not. If it is, the possession which at any time you may be deprived of, with respect to it, must at that time be either present or to come: if to come (in which case it may be regarded either as certain or as contingent), the investitive event, or event from whence your possession of it should have taken its commencement, was either an event in the production of which the will of the offender should have been instrumental, or any other event at large: in the former case, the offence may be termed *wrongful non-investment of trust*: in the latter case, *wrongful interception of trust*.[246] If at the time of the offence whereby you are deprived of it, you were already in possession of it, the offence may be styled

wrongful divestment of trust. In any of these cases, the effect of the offence is either to put somebody else into the trust, or not: if not, it is wrongful divestment, wrongful interception, or wrongful divestment, and nothing more: if it be, the person put in possession is either the wrong-doer himself, in which case it may be styled *usurpation of trust*; or some other person, in which case it may be styled *wrongful investment*, or attribution, *of trust*. If the trust in question is *not* of the number of those which ought to subsist, it depends upon the manner in which one man deprives another of it, whether such deprivation shall or shall not be an offence, and, accordingly, whether non-investment, interception, or divestment, shall or shall not be wrongful. But the putting any body into it must at any rate be an offence: and this offence may be either usurpation or wrongful investment, as before.

In the next place, to consider it upon the footing of a burthen. In this point of view, if no other interest than that of the persons liable to be invested with it were considered, it is what ought not, upon the principle of utility, to subsist: if it ought, it can only be for the sake of the persons in whose favour it is established. If then it ought *not* on any account to subsist, neither non-investment, interception, nor divestment, can be wrongful with relation to the persons first mentioned, whatever they may be on any other account, in respect of the manner in which they happen to be performed: for usurpation, though not likely to be committed, there is the same room as before: so likewise is there for wrongful investment; which, in as far as the trust is considered as a burthen, may be styled *wrongful imposition of trust*. If the trust, being still of the burthensome kind, is of the number of those which *ought* to subsist, any offence that can be committed, with relation to the existence of it, must consist either in causing a person to *be* in possession of it, who ought *not* to be, or in causing a person *not* to be in possession of it who *ought* to be: in the former case, it must be either usurpation or wrongful divestment, as before: in the latter case, the person who is caused to be not in possession, is either the wrong-doer himself, or some other: if the wrong-doer himself, either at the time of the offence he was in possession of it, or he was not: if he

was, it may be termed *wrongful abdication* of trust; if not, *wrongful detrectation*[247] or *non-assumption:* if the person, whom the offence causes not to be in the trust, is any other person, the offence must be either wrongful divestment, wrongful non-investment, or wrongful interception, as before: in any of which cases to consider the trust in the light of a burthen, it might also be styled *wrongful exemption from trust.*

Lastly, with regard to the prejudice which the persons for whose benefit the trust is instituted, or any other persons whose interests may come to be affected by its existing or not existing in such or such hands, are liable to sustain. Upon examination it will appear, that by every sort of offence whereby the persons who are or should be in possession of it are liable, in that respect, to sustain a prejudice, the persons now in question are also liable to sustain a prejudice. The prejudice, in this case, is evidently of a very different nature from what it was of in the other: but the same general names will be applicable in this case as in that. If the beneficiaries, or persons whose interests are at stake upon the exercise of the trust, or any of them, are liable to sustain a prejudice, resulting from the quality of the person by whom it may be filled, such prejudice must result from the one or the other of two causes: 1. From a person's having the possession of it who ought not to have it: or 2. From a person's not having it who ought: whether it be a benefit or burthen to the possessor, is a circumstance that to this purpose makes no difference. In the first of these cases the offences from which the prejudice takes its rise are those of usurpation of trust, wrongful attribution of trust, and wrongful imposition of trust: in the latter, wrongful non-investment of trust, wrongful interception of trust, wrongful divestment of trust, wrongful abdication of trust, and wrongful detrectation of trust.

So much for the offences which concern the existence or possession of a trust: those which concern the exercise of the functions that belong to it may be thus conceived. You are in possession of a trust: the time then for your acting in it must, on any given occasion, (neglecting, for simplicity's sake, the then present instant) be either past or yet to come. If

past, your conduct on that occasion must have been either conformable to the purposes for which the trust was instituted, or unconformable: if conformable, there has been no mischief in the case: if unconformable, the fault has been either in yourself alone, or in some other person, or in both: in as far as it has lain in yourself, it has consisted either in your *not* doing something which you ought to do, in which case it may be styled *negative breach of trust;* or in your *doing* something which you ought *not* to do: if in the doing something which you ought not to do, the party to whom the prejudice has accrued is either the same for whose benefit the trust was instituted, or some other party at large: in the former of these cases, the offence may be styled *positive breach of trust;* in the other, *abuse of trust.*[248] In as far as the fault lies in another person, the offence on his part may be styled *disturbance of trust.* Supposing the time for your acting in the trust to be yet to come, the effect of any act which tends to render your conduct unconformable to the purposes of the trust, may be either to render it actually and eventually unconformable, or to produce a chance of its being so. In the former of these cases, it can do no otherwise than take one or other of the shapes that have just been mentioned. In the latter case, the blame must lie either in yourself alone, or in some other person, or in both together, as before. If in another person, the acts whereby he may tend to render your conduct unconformable, must be exercised either on yourself, or on other objects at large. If exercised on yourself, the influence they possess must either be such as operates immediately on your body, or such as operates immediately on your mind. In the latter case, again, the tendency of them must be to deprive you either of the knowledge, or of the power, or of the inclination,[249] which would be necessary to your maintaining such a conduct as shall be conformable to the purposes in question. If they be such, of which the tendency is to deprive you of the inclination in question, it must be by applying to your will the force of some *seducing* motive.[250] Lastly, This motive must be either of the *coercive,* or of the *alluring* kind; in other words, it must present itself either in the shape of a mischief or of an advantage. Now

in none of all the cases that have been mentioned, except the last, does the offence receive any new denomination; according to the event it is either a disturbance of trust, or an abortive attempt to be guilty of that offence. In this last it is termed *bribery*; and it is that particular species of it which may be termed *active* bribery, or *bribe-giving*. In this case, to consider the matter on your part, either you accept of the bribe, or you do not: if not, and you do not afterwards commit, or go about to commit, either a breach or an abuse of trust, there is no offence, on your part, in the case: if you do accept it, whether you eventually do or do not commit the breach or the abuse which it is the bribe-giver's intention you should commit, you at any rate commit an offence which is also termed bribery: and which, for distinction sake, may be termed *passive* bribery, or *bribe-taking*.[251] As to any farther distinctions, they will depend upon the nature of the particular sort of trust in question, and therefore belong not to the present place. And thus we have thirteen sub-divisions of offences against trust: viz. 1. Wrongful non-investment of trust. 2. Wrongful interception of trust. 3. Wrongful divestment of trust. 4. Usurpation of trust. 5. Wrongful investment or attribution of trust. 6. Wrongful abdication of trust. 7. Wrongful detrectation of trust. 8. Wrongful imposition of trust. 9. Negative breach of trust. 10. Positive breach of trust. 11. Abuse of trust. 12. Disturbance of trust. 13. Bribery.

XXVIII. *Prodigality in trustees dismissed to Class* 3. From what has been said, it appears that there cannot be any other offences, on the part of a trustee, by which a *beneficiary* can receive on any particular occasion any assignable specific prejudice. One sort of acts, however, there are by which a trustee may be put in some *danger* of receiving a prejudice, although neither the nature of the prejudice, nor the occasion on which he is in danger of receiving it, should be assignable. These can be no other than such acts, whatever they may be, as dispose the trustee to be acted upon by a given bribe with greater effect than any with which he could otherwise be acted upon: or in other words, which place him in such circumstances as have a tendency to increase the quantum of his sensibility to the action of any motive of the sort in ques-

tion.[252] Of these acts, there seem to be no others, that will admit of a description applicable to all places and times alike, than acts of *prodigality* on the part of the trustee. But in acts of this nature the prejudice to the *beneficiary* is contingent only and unliquidated; while the prejudice to the trustee himself is certain and liquidated. If therefore on any occasion it should be found advisable to treat it on the footing of an offence, it will find its place more naturally in the class of self-regarding ones.

XXIX. *The subdivisions of offences against trust are also determined by the divisions of the preceding classes.* As to the subdivisions of offences against trust, these are perfectly analogous to those of offences by falsehood. The trust may be private, semi-public, or public: it may concern property, person, reputation, or condition; or any two or more of those articles at a time: as will be more particularly explained in another place. Here too the offence, in running over the ground occupied by the three prior classes, will in some instances change its name, while in others it will not.

XXX. *Connection between offences by falsehood and offences against trust.* Lastly, if it be asked, What sort of relation there subsists between falsehoods on one hand, and offences concerning trust on the other hand; the answer is, they are altogether disparate. Falsehood is a circumstance that may enter into the composition of any sort of offence, those concerning trust, as well as any other: in some as an accidental, in others as an essential instrument. Breach or abuse of trust are circumstances which, in the character of accidental concomitants, may enter into the composition of any other offences (those against falsehood included) besides those to which they respectively give name.

§ 3. *Genera of Class* 1.

XXXI. *Analysis into* genera *pursued no farther than Class* 1. Returning now to class the first, let us pursue the distribution a step farther, and branch out the several divisions of that class, as above exhibited, into their respective *genera*, that is, into such minuter divisions as are capable of being charac-

terised by denominations of which a great part are already current among the people.[253] In this place the analysis must stop. To apply it in the same regular form to any of the other classes seems scarcely practicable: to semi-public, as also to public offences, on account of the interference of local circumstances: to self-regarding ones, on account of the necessity it would create of deciding prematurely upon points which may appear liable to controversy: to offences by falsehood, and offences against trust, on account of the dependence there is between this class and the three former. What remains to be done in this way, with reference to these four classes, will require discussion, and will therefore be introduced with more propriety in the body of the work, than in a preliminary part, of which the business is only to draw outlines.

XXXII. *Offences against an individual may be simple in their effects, or complex.* An act, by which the happiness of an individual is disturbed, is either *simple* in its effects or *complex*. It may be styled simple in its effects, when it affects him in one only of the articles or points in which his interest, as we have seen, is liable to be affected: complex, when it affects him in several of those points at once. Such as are simple in their effects must of course be first considered.

XXXIII. *Offences against person—their genera.* In a simple way, that is in one way at a time, a man's happiness is liable to be disturbed either 1. By actions referring to his own person itself; or 2. By actions referring to such external objects on which his happiness is more or less dependent. As to his own person, it is composed of two different parts, or reputed parts, his body and his mind. Acts which exert a pernicious influence on his person, whether it be on the corporeal or on the mental part of it, will operate thereon either immediately, and without affecting his will, or mediately, through the intervention of that faculty: viz. by means of the influence which they cause his will to exercise over his body. If with the intervention of his will, it must be by *mental coercion*: that is, by causing him to *will* to maintain, and thence actually to maintain, a certain conduct which it is disagreeable, or in any other way pernicious, to him to main-

tain. This conduct may either be positive or negative:[254] when positive, the coercion is styled *compulsion* or constraint: when negative, *re*straint. Now the way in which the coercion is disagreeable to him, may be by producing either pain of body, or only pain of mind. If pain of body is produced by it, the offence will come as well under this as under other denominations, which we shall come to presently. Moreover, the conduct which a man, by means of the coercion, is forced to maintain, will be determined either specifically and originally, by the determination of the particular acts themselves which he is forced to perform or to abstain from, or generally and incidentally, by means of his being forced to be or not to be in such or such a place. But if he is prevented from being in one place, he is confined thereby to another. For the whole surface of the earth, like the surface of any greater or lesser body, may be conceived to be divided into two, as well as into any other number of parts or spots. If the spot then, which he is confined to, be smaller than the spot which he is excluded from, his condition may be called *confinement:* if larger, *banishment*.[255] Whether an act, the effect of which is to exert a pernicious influence on the person of him who suffers by it, operates with or without the intervention of an act of his will, the mischief it produces will either be *mortal* or *not mortal*. If not mortal, it will either be *reparable*, that is temporary; or *irreparable*, that is perpetual. If reparable, the mischievous act may be termed a *simple corporal injury*; if irreparable, an *irreparable corporal injury*. Lastly, a pain that a man experiences in his mind will either be a pain of actual *sufferance*, or a pain of *apprehension*. If a pain of apprehension, either the offender himself is represented as intending to bear a part in the production of it, or he is not. In the former case the offence may be styled *menacement:* in the latter case, as also where the pain is a pain of actual sufferance, a *simple mental injury*. And thus we have nine genera or kinds of personal injuries; which, when ranged in the order most commodious for examination, will stand as follows; viz. 1. Simple corporal injuries. 2. Irreparable corporal injuries. 3. Simple injurious restrainment. 4. Simple injurious compulsion.[256] 5. Wrongful confinement. 6. Wrongful

banishment. 7. Wrongful homicide. 8. Wrongful menacement.[257] 9. Simple mental injuries.[258]

XXXIV. *Offence against reputation.* We come now to offences against reputation merely. These require but few distinctions. In point of reputation there is but one way of suffering, which is by losing a portion of the good-will of others. Now, in respect of the good-will which others bear you, you may be a loser in either of two ways: 1. By the manner in which you are thought to behave *yourself*; and 2. By the manner in which *others* behave, or are thought to behave, towards you. To cause people to think that you yourself have so behaved, as to have been guilty of any of those acts which cause a man to possess less than he did before of the good-will of the community, is what may be styled *defamation.* But such is the constitution of human nature, and such the force of prejudice, that a man merely by manifesting his own want of good-will towards you, though ever so unjust in itself, and ever so unlawfully expressed, may in a manner force others to withdraw from you a part of theirs. When he does this by words, or by such actions as have no other effect than in as far as they stand in the place of words, the offence may be styled *vilification.* When it is done by such actions as, besides their having this effect, are injuries to the person, the offence may be styled a *personal insult:* if it has got the length of reaching the body, a *corporal insult:* if it stopped short before it reached that length, it may be styled *insulting menacement.* And thus we have two *genera* or kinds of offences against reputation merely; to wit, 1. Defamation: and, 2. Vilification, or Revilement.[259] As to corporal insults, and insulting menacement, they belong to the compound title of offences against person and reputation both together.

XXXV. *Offences against property.* If the property of one man suffers by the delinquency of another, such property either was in trust with the offender, or it was not: if it was in trust, the offence is a breach of trust, and of whatever nature it may be in other respects, may be styled *dissipation in breach of trust,* or *dissipation of property in trust.* This is a particular case: the opposite one is the more common: in such case the several ways in which property may, by possibility,

become the object of an offence, may be thus conceived. Offences against property, of whatever kind it be, may be distinguished, as hath been already intimated,[260] into such as concern the legal possession of it, or right to it, and such as concern only the enjoyment of it, or, what is the same thing, the exercise of that right. Under the former of these heads come, as hath been already intimated,[261] the several offences of *wrongful non-investment*, *wrongful interception*, *wrongful divestment*, *usurpation*, and *wrongful attribution*. When in the commission of any of these offences a falsehood has served as an instrument, and that, as it is commonly called, a *wilful*, or as it might more properly be termed, an *advised*[262] one, the epithet *fraudulent* may be prefixed to the name of the offence, or substituted in the room of the word *wrongful*. The circumstance of fraudulency then may serve to characterise a particular species, comprisable under each of those generic heads: in like manner the circumstance of *force*, of which more a little farther on, may serve to characterise another. With respect to wrongful interception in particular, the *investitive event* by which the title to the thing in question should have accrued to you, and for want of which such title is, through the delinquency of the offender, as it were, *intercepted*, is either an act of his own, expressing it as his will, that you should be considered by the law as the person who is legally in possession of it, or it is any other event at large: in the former case, if the thing, of which you should have been put into possession, is a sum of money to a certain amount, the offence is that which has received the name of *insolvency*; which branch of delinquency, in consideration of the importance and extent of it, may be treated on the footing of a distinct genus of itself.[263]

Next, with regard to such of the offences against property as concern only the enjoyment of the object in question. This object must be either a service, or set of services,[264] which should have been rendered by some *person*, or else an article belonging to the class of *things*. In the former case, the offence may be styled *wrongful withholding of services*.[265] In the latter case it may admit of farther modifications, which may be thus conceived: When any object which you have

had the physical occupation or enjoyment of, ceases, in any degree, in consequence of the act of another man, and without any change made in so much of that power as depends upon the intrinsic physical condition of your person, to be subject to that power; this cessation is either owing to change in the intrinsic condition of the thing itself, or in its exterior situation with respect to you, that is, to its being situated out of your reach. In the former case, the nature of the change is either such as to put it out of your power to make any use of it at all, in which case the thing is said to be *destroyed*, and the offence whereby it is so treated may be termed *wrongful destruction:* or such only as to render the uses it is capable of being put to of less value than before, in which case it is said to be *damaged*, or to have sustained damage, and the offence may be termed *wrongful endamagement*. Moreover, in as far as the value which a thing is of to you is considered as being liable to be in some degree impaired, by any act on the part of any other person exercised upon that thing, although on a given occasion no perceptible damage should ensue, the exercise of any such act is commonly treated on the footing of an offence, which may be termed *wrongful using* or *occupation*.

If the cause of the thing's failing in its capacity of being of use to you, lies in the exterior situation of it with relation to you, the offence may be styled *wrongful detainment*.[266] Wrongful detainment, or detention, during any given period of time, may either be accompanied with the intention of detaining the thing for ever (that is for an indefinite time), or not: if it be, and if it be accompanied at the same time with the intention of not being amenable to law for what is done, it seems to answer to the idea commonly annexed to the word *embezzlement*, an offence which is commonly accompanied with breach of trust.[267] In the case of wrongful occupation, the physical faculty of occupying may have been obtained with or without the assistance or consent of the proprietor, or other person appearing to have a right to afford such assistance or consent. If without such assistance or consent, and the occupation be accompanied with the intention of detaining the thing for ever, together with the intention of not be-

ing amenable to law for what is done, the offence seems to answer to the idea commonly annexed to the word *theft* or *stealing*. If in the same circumstances a force is put upon the body of any person who uses, or appears to be disposed to use, any endeavours to prevent the act, this seems to be one of the cases in which the offence is generally understood to come under the name of *robbery*.

If the physical faculty in question was obtained with the assistance or consent of a proprietor or other person above spoken of, and still the occupation of the thing is an offence, it may have been either because the assistance or consent was not fairly or because it was not freely obtained. If not *fairly* obtained, it was obtained by falsehood, which, if *advised*, is in such a case termed *fraud:* and the offence, if accompanied with the intention of not being amenable to law, may be termed *fraudulent obtainment* or *defraudment.*[268] If not *freely* obtained, it was obtained by *force:* to wit, either by a force put upon the body, which has been already mentioned, or by a force put upon the mind. If by a force put upon the mind, or in other words, by the application of coercive motives,[269] it must be by producing the apprehension of some evil: which evil, if the act is an offence, must be some evil to which on the occasion in question the one person has no right to expose the other. This is one case in which, if the offence be accompanied with the intention of detaining the thing for ever, whether it be or be not accompanied with the intention of not being amenable to law, it seems to agree with the idea of what is commonly meant by *extortion*. Now the part a man takes in exposing another to the evil in question, must be either a positive or a negative part. In the former case, again, the evil must either be present or distant. In the case then where the assistance or consent is obtained by a force put upon the body, or where, if by a force put upon the mind, the part taken in the exposing a man to the apprehension of the evil is positive, the evil present, and the object of it his person, and if at any rate the extortion, thus applied, be accompanied with the intention of not being amenable to law, it seems to agree with the remaining case of what goes under the name of *robbery*.

As to dissipation in breach of trust, this, when productive of a pecuniary profit to the trustee, seems to be one species of what is commonly meant by *peculation*. Another, and the only remaining one, seems to consist in acts of occupation exercised by the trustee upon the things which are the objects of the fiduciary property, for his own benefit, and to the damage of the beneficiary. As to robbery, this offence, by the manner in which the assistance or consent is obtained, becomes an offence against property and person at the same time. Dissipation in breach of trust, and peculation, may perhaps be more commodiously treated of under the head of offences against trust.[270] After these exceptions, we have thirteen genera or principal kinds of offences against property, which, when ranged in the order most commodious for examination, may stand as follows, viz. 1. Wrongful non-investment of property. 2. Wrongful interception of property. 3. Wrongful divestment of property. 4. Usurpation of property. 5. Wrongful investment of property. 6. Wrongful withholding of services. 7. Wrongful destruction or endamagement. 8. Wrongful occupation. 9. Wrongful detainment. 10. Embezzlement. 11. Theft. 12. Defraudment. 13. Extortion.[271]

We proceed now to consider offences which are complex in their effects. Regularly, indeed, we should come to offences against condition; but it will be more convenient to speak first of offences by which a man's interest is affected in two of the preceding points at once.

XXXVI. *Offences against person and reputation*. First, then, with regard to offences which affect person and reputation together. When any man, by a mode of treatment which affects the person, injures the reputation of another, his end and purpose must have been either his own immediate pleasure, or that sort of reflected pleasure, which in certain circumstances may be reaped from the suffering of another. Now the only immediate pleasure worth regarding, which any one can reap from the person of another, and which at the same time is capable of affecting the reputation of the latter, is the pleasure of the sexual appetite.[272] This pleasure, then, if reaped at all, must have been reaped either against the consent of the party, or with consent. If with consent, the con-

sent must have been obtained either freely and fairly both, or freely but not fairly, or else not even freely; in which case the fairness is out of the question. If the consent be altogether wanting, the offence is called *rape*: if not fairly obtained, *seduction* simply: if not freely, it may be called *forcible seduction*. In any case, either the offence has gone the length of consummation, or has stopped short of that period; if it has gone that length, it takes one or other of the names just mentioned: if not, it may be included alike in all cases under the denomination of a *simple lascivious injury*. Lastly, to take the case where a man injuring you in your reputation, by proceedings that regard your person, does it for the sake of that sort of pleasure which will sometimes result from the contemplation of another's pain. Under these circumstances either the offence has actually gone the length of a corporal injury, or it has rested in menacement: in the first case it may be styled a *corporal insult*; in the other, it may come under the name of *insulting menacement*. And thus we have six genera, or kind of offences, against person and reputation together; which, when ranged in the order most commodious for consideration, will stand thus: 1. Corporal insults. 2. Insulting menacement. 3. Seduction. 4. Rape. 5. Forcible seduction. 6. Simple lascivious injuries.[278]

XXXVII. *Offences against person and property*. Secondly, with respect to those which affect person and property together. That a force put upon the person of a man may be among the means by which the title to property may be unlawfully taken away or acquired, has been already stated.[274] A force of this sort then is a circumstance which may accompany the offences of wrongful interception, wrongful divestment, usurpation, and wrongful investment. But in these cases the intervention of this circumstance does not happen to have given any new denomination to the offence.[275] In all or any of these cases, however, by prefixing the epithet *forcible*, we may have so many names of offences, which may either be considered as constituting so many species of the genera belonging to the division of offences against property, or as so many genera belonging to the division now before us. Among the offences that concern the enjoyment of the thing, the case

is the same with wrongful destruction and wrongful endamagement; as also with wrongful occupation and wrongful detainment. As to the offence of wrongful occupation, it is only in the case where the thing occupied belongs to the class of immovables, that, when accompanied by the kind of force in question, has obtained a particular name which is in common use: in this case it is called *forcible entry:* forcible detainment, as applied also to immovables, but only to immovables, has obtained, among lawyers at least, the name of *forcible detainer.*[276] And thus we may distinguish ten genera, or kinds of offences, against person and property together, which, omitting for conciseness' sake the epithet *wrongful,* will stand thus: 1. Forcible interception of property. 2. Forcible divestment of property. 3. Forcible usurpation. 4. Forcible investment. 5. Forcible destruction or endamagement. 6. Forcible occupation of movables. 7. Forcible entry. 8. Forcible detainment of movables. 9. Forcible detainment of immovables. 10. Robbery.[277]

XXXVIII. *Offences against condition.—Conditions domestic or civil.* We come now to offences against *condition.* A man's condition or station in life is constituted by the legal relation he bears to the persons who are about him; that is, as we have already had occasion to show,[278] by *duties,* which, by being imposed on one side, give birth to *rights* or *powers* on the other. These relations, it is evident, may be almost infinitely diversified. Some means, however, may be found of circumscribing the field within which the varieties of them are displayed. In the first place, they must either be such as are capable of displaying themselves within the circle of a private family, or such as require a larger space. The conditions constituted by the former sort of relations may be styled *domestic:* those constituted by the latter, *civil.*

XXXIX. *Domestic conditions grounded on natural relationships.* As to domestic conditions, the legal relations by which they are constituted may be distinguished into 1. Such as are superadded to relations purely natural: and 2. Such as, without any such natural basis, subsist purely by institution. By relations purely natural, I mean those which may be said to subsist between certain persons in virtue of the concern

which they themselves, or certain other persons, have had in the process which is necessary to the continuance of the species. These relations may be distinguished, in the first place, into contiguous and uncontiguous. The uncontiguous subsist through the intervention of such as are contiguous. The contiguous may be distinguished, in the first place, into *connubial*, and *post-connubial*.[279] Those which may be termed connubial are two: 1. That which the male bears towards the female: 2. That which the female bears to the male.[280] The post-connubial are either *productive* or *derivative*. The productive is that which the male and female abovementioned bear each of them towards the children who are the immediate fruit of their union; this is termed the relation of *parentality*. Now as the parents must be, so the children may be, of different sexes. Accordingly the relation of parentality may be distinguished into four species: 1. That which a father bears to his son: this is termed *paternity*. 2. That which a father bears to his daughter: this also is termed paternity. 3. That which a mother bears to her son: this is called *maternity*. 4. That which a mother bears to her daughter: this also is termed maternity. Uncontiguous natural relations may be distinguished into *immediate* and *remote*. Such as are immediate, are what one person bears to another in consequence of their bearing each of them one simple relation to some third person. Thus the paternal grandfather is related to the paternal grandson by means of the two different relations, of different kinds, which together they bear to the father: the brother on the father's side, to the brother, by means of the two relations of the same kind, which together they bear to the father. In the same manner we might proceed to find places in the system for the infinitely diversified relations which result from the combinations that may be formed by mixing together the several sorts of relationships by *ascent*, relationships by *descent*, *collateral* relationships, and relationships by *affinity*: which latter, when the union between the two parties through whom the affinity takes place is sanctioned by matrimonial solemnities, are termed relationships by *marriage*. But this, as it would be a most intricate and tedious task, so happily is it, for the present purpose, an un-

necessary one. The only natural relations to which it will be necessary to pay any particular attention, are those which, when sanctioned by law, give birth to the conditions of husband and wife, the two relations comprised under the head of parentality, and the corresponding relations comprised under the head of filiality or filiation.

What then are the relations of a legal kind which can be superinduced upon the above-mentioned natural relations? They must be such as it is the nature of law to give birth to and establish. But the relations which subsist purely by institution exhaust, as we shall see, the whole stock of relationships which it is in the nature of the law to give birth to and establish. The relations then which can be superinduced upon those which are purely natural, cannot be in themselves any other than what are of the number of those which subsist purely by institution: so that all the difference there can be between a legal relation of the one sort, and a legal relation of the other sort, is, that in the former case the circumstance which gave birth to the natural relation serves as a mark to indicate where the legal relation is to fix: in the latter case, the place where the legal relation is to attach is determined not by that circumstance but by some other. From these considerations it will appear manifestly enough, that for treating of the several sorts of conditions, as well natural as purely conventional, in the most commodious order, it will be necessary to give the precedence to the latter. Proceeding throughout upon the same principle, we shall all along give the priority, not to those which are first by nature, but to those which are most simple in point of description. There is no other way of avoiding perpetual anticipations and repetitions.

XL. *Domestic relations which are purely of legal institution.* We come now to consider the domestic or family relations, which are purely of legal institution. It is to these in effect, that both kinds of domestic conditions, considered as the work of law, are indebted for their origin. When the law, no matter for what purpose, takes upon itself to operate, in a matter in which it has not operated before, it can only be by imposing *obligation*.[281] Now when a legal obligation is imposed on any man, there are but two ways in which it can in

the first instance be enforced. The one is by giving the power of enforcing it to the party in whose favour it is imposed: the other is by reserving that power to certain third persons, who, in virtue of their possessing it, are styled ministers of justice. In the first case, the party favoured is said to possess not only a *right* as against the party obliged, but also a *power* over him: in the second case, a *right* only, uncorroborated by power. In the first case, the party favoured may be styled a *superior*, and as they are both members of the same family, a *domestic superior*, with reference to the party obliged: who, in the same case, may be styled a *domestic inferior*, with reference to the party favoured. Now in point of possibility, it is evident, that domestic conditions, or a kind of fictitious possession analogous to domestic conditions, might have been looked upon as constituted, as well by rights alone, without powers on either side, as by powers. But in point of utility [282] it does not seem expedient: and in point of fact, probably owing to the invariable perception which men must have had of the inexpediency, no such conditions seem ever to have been constituted by such feeble bands. Of the legal relationships then, which are capable of being made to subsist within the circle of a family, there remain those only in which the obligation is enforced by power. Now then, wherever any such power is conferred, the end or purpose for which it was conferred (unless the legislator can be supposed to act without a motive) must have been the producing of a benefit to somebody: in other words, it must have been conferred for the *sake* of somebody. The person then, for whose sake it is conferred, must either be one of the two parties just mentioned, or a third party: if one of these two, it must be either the superior or the inferior. If the superior, such superior is commonly called a *master*; and the inferior is termed his *servant:* and the power may be termed a *beneficial* one. If it be for the sake of the inferior that the power is established, the superior is termed a *guardian;* and the inferior his *ward:* and the power, being thereby coupled with a trust, may be termed a *fiduciary* one. If for the sake of a third party, the superior may be termed a *superintendent;* and the inferior his *subordinate*. This third party will either be an assignable individual or set of indi-

viduals, or a set of unassignable individuals. In this latter case the trust is either a public or a semi-public one: and the condition which it constitutes is not of the domestic, but of the civil kind. In the former case, this third party or *principal*, as he may be termed, either has a beneficial power over the superintendent, or he has not: if he has, the superintendent is his servant, and consequently so also is the subordinate: if not, the superintendent is the master of the subordinate; and all the advantage which the principal has over his superintendent, is that of possessing a set of rights, uncorroborated by power; and therefore, as we have seen,[283] not fit to constitute a condition of the domestic kind. But be the condition what it may which is constituted by these rights, of what nature can the obligations be, to which the superintendent is capable of being subjected by means of them? They are neither more nor less than those which a man is capable of being subjected to by powers. It follows, therefore, that the functions of a principal and his superintendent coincide with those of a master and his servant; and consequently that the offences relative to the two former conditions will coincide with the offences relative to the two latter.

XLI. *Offences touching the condition of a master.* Offences to which the condition of a master, like any other kind of condition, is exposed, may, as hath been already intimated,[284] be distinguished into such as concern the existence of the condition itself, and such as concern the performance of the functions of it, while subsisting. First then, with regard to such as affect its existence. It is obvious enough that the services of one man may be a benefit to another: the condition of a master may therefore be a beneficial one. It stands exposed, therefore, to the offences of *wrongful non-investment*, *wrongful interception*, *usurpation*, *wrongful investment*, and *wrongful divestment*. But how should it stand exposed to the offences of *wrongful abdication*, *wrongful detrectation*, and *wrongful imposition*? Certainly it cannot of itself; for services, when a man has the power of exacting them or not, as he thinks fit, can never be a burthen. But if to the powers, by which the condition of a master is constituted, the law thinks fit to annex any obligation on the part of the master; for in-

stance, that of affording maintenance, or giving wages, to the servant, or paying money to anybody else; it is evident that in virtue of such obligation the condition *may* become a burthen. In this case, however, the condition possessed by the master will not, properly speaking, be the pure and simple condition of a master: it will be a kind of complex object, resolvable into the beneficial condition of a master, and the burthensome obligation which is annexed to it. Still however, if the nature of the obligation lies within a narrow compass, and does not, in the manner of that which constitutes a trust, interfere with the exercise of those powers by which the condition of the superior is constituted, the latter, notwithstanding this foreign mixture, will still retain the name of mastership.[285] In this case therefore, but not otherwise, the condition of a master may stand exposed to the offences of *wrongful abdication*, *wrongful detrectation*, and *wrongful imposition*. Next as to the behaviour of persons with reference to this condition, while considered as subsisting. In virtue of its being a benefit, it is exposed to *disturbance*. This disturbance will either be the offence of a stranger, or the offence of the servant himself. Where it is the offence of a stranger, and is committed by taking the person of the servant, in circumstances in which the taking of an object belonging to the class of things would be an act of theft, or (what is scarcely worth distinguishing from theft) an act of embezzlement: it may be termed *servant-stealing*. Where it is the offence of the servant himself, it is styled *breach of duty*. Now the most flagrant species of breach of duty, and that which includes indeed every other, is that which consists in the servant's withdrawing himself from the place in which the duty should be performed. This species of breach of duty is termed *elopement*. Again, in virtue of the power belonging to this condition, it is liable, on the part of the master to *abuse*. But this power is not coupled with a trust. The condition of a master is therefore not exposed to any offence which is analogous to breach of trust. Lastly, on account of its being exposed to abuse, it may be conceived to stand, in point of possibility, exposed to *bribery*. But considering how few, and how insignificant, the persons are who are liable to be subject to the power here in

question, this is an offence which, on account of the want of temptation, there will seldom be any example of in practice. We may therefore reckon thirteen sorts of offences to which the condition of a master is exposed; viz. 1. Wrongful non-investment of mastership. 2. Wrongful interception of mastership. 3. Wrongful divestment of mastership. 4. Usurpation of mastership. 5. Wrongful investment of mastership. 6. Wrongful abdication of mastership. 7. Wrongful detrectation of mastership. 8. Wrongful imposition of mastership. 9. Abuse of mastership. 10. Disturbance of mastership. 11. Breach of duty in servants. 12. Elopement of servants. 13. Servant-stealing.

XLII. *Various modes of servitude.* As to the *power* by which the condition of a master is constituted, this may be either *limited* or *unlimited*. When it is altogether unlimited, the condition of the servant is styled *pure slavery*. But as the rules of language are as far as can be conceived from being steady on this head, the term slavery is commonly made use of wherever the limitations prescribed to the power of the master are looked upon as inconsiderable. Whenever any such limitation is prescribed, a kind of fictitious entity is thereby created, and, in quality of an incorporeal object of possession, is bestowed upon the servant: this object is of the class of those which are called *rights*: and in the present case is termed, in a more particular manner, a *liberty*; and sometimes a *privilege*, an *immunity*, or an *exemption*. Now those limitations on the one hand, and these liberties on the other, may, it is evident, be as various as the acts (positive or negative) which the master may or may not have the power of obliging the servant to submit to or to perform. Correspondent then to the infinitude of these liberties, is the infinitude of the modifications which the condition of mastership (or, as it is more common to say in such a case, that of servitude) admits of. These modifications, it is evident, may, in different countries, be infinitely diversified. In different countries, therefore, the offences characterised by the above names will, if specifically considered, admit of very different descriptions. If there be a spot upon the earth so wretched as to exhibit the spectacle of pure and absolutely unlimited slavery, on that spot there will be no such thing as any abuse of mastership; which

means neither more nor less than that no abuse of mastership will there be treated on the footing of an offence. As to the question, Whether any, and what, modes of servitude ought to be established or kept on foot? this is a question, the solution of which belongs to the civil branch of the art of legislation.

XLIII. *Offences touching the condition of a servant.* Next, with regard to the offences that may concern the condition of a servant. It might seem at first sight, that a condition of this kind could not have a spark of benefit belonging to it: that it could not be attended with any other consequences than such as rendered it a mere burthen. But a burthen itself may be a benefit, in comparison of a greater burthen. Conceive a man's situation then to be such, that he must, at any rate, be in a state of pure slavery. Still may it be material to him, and highly material, who the person is whom he has for his master. A state of slavery then, under one master, may be a beneficial state to him, in comparison with a state of slavery under another master. The condition of a servant then is exposed to the several offences to which a condition, in virtue of its being a beneficial one, is exposed.[286] More than this, where the power of the master is limited, and the limitations annexed to it, and thence the liberties of the servant, are considerable, the servitude may even be positively eligible. For amongst those limitations may be such as are sufficient to enable the servant to possess property of his own: being capable then of possessing property of his own, he may be capable of receiving it from his master: in short, he may receive *wages*, or other emoluments, from his master; and the benefit resulting from these wages may be so considerable as to outweigh the burthen of the servitude, and, by that means, render that condition more beneficial upon the whole, and more eligible, than that of one who is not in any respect under the control of any such person as a master. Accordingly, by these means the condition of the servant may be so eligible, that his entrance into it, and his continuance in it, may have been altogether the result of his own choice. That the nature of the two conditions may be the more clearly understood, it may be of use to show the sort of correspondency there is between the offences which

affect the existence of the one, and those which affect the existence of the other. That this correspondency cannot but be very intimate is obvious at first sight. It is not, however, that a given offence in the former catalogue coincides with an offence of the same name in the latter catalogue: usurpation of servantship with usurpation of mastership, for example. But the case is, that an offence of one denomination in the one catalogue coincides with an offence of a different denomination in the other catalogue. Nor is the coincidence constant and certain: but liable to contingencies, as we shall see. First, then, wrongful non-investment of the condition of a servant, if it be the offence of one who should have been the master, coincides with wrongful detrectation of mastership: if it be the offence of a third person, it involves in it non-investment of mastership, which, provided the mastership be in the eyes of him who should have been master a beneficial thing, but not otherwise, is wrongful. 2. Wrongful interception of the condition of a servant, if it be the offence of him who should have been master, coincides with wrongful detrectation of mastership: if it be the offence of a third person, and the mastership be a beneficial thing, it involves in it wrongful interception of mastership. 3. Wrongful divestment of servantship, if it be the offence of the master, but not otherwise, coincides with wrongful abdication of mastership: if it be the offence of a stranger, it involves in it divestment of mastership, which, in as far as the mastership is a beneficial thing, is wrongful. 4. Usurpation of servantship coincides necessarily with wrongful imposition of mastership: it will be apt to involve in it wrongful divestment of mastership: but this only in the case where the usurper, previously to the usurpation, was in a state of servitude under some other master. 5. Wrongful investment of servantship (the servantship being considered as a beneficial thing) coincides with imposition of mastership; which, if in the eyes of the pretended master the mastership should chance to be a burthen, will be wrongful. 6. Wrongful abdication of servantship coincides with wrongful divestment of mastership. 7. Wrongful detrectation of servantship, with wrongful non-investment of mastership. 8. Wrongful imposition of servantship, if it be the offence of the pretended mas-

ter, coincides with usurpation of mastership: if it be the offence of a stranger, it involves in it imposition of mastership, which, if in the eyes of the pretended master the mastership should be a burthen, will be wrongful. As to abuse of mastership, disturbance of mastership, breach of duty in servants, elopement of servants, and servant-stealing, these are offences which, without any change of denomination, bear equal relation to both conditions. And thus we may reckon thirteen sorts of offences to which the condition of a servant stands exposed: viz. 1. Wrongful non-investment of servantship. 2. Wrongful interception of servantship. 3. Wrongful divestment of servantship. 4. Usurpation of servantship. 5. Wrongful investment of servantship. 6. Wrongful abdication of servantship. 7. Wrongful detrectation of servantship. 8. Wrongful imposition of servantship. 9. Abuse of mastership. 10. Disturbance of mastership. 11. Breach of duty in servants. 12. Elopement of servants. 13. Servant-stealing.

XLIV. *Guardianship, what—Necessity of the institution.* We now come to the offences to which the condition of a guardian is exposed. A guardian is one who is invested with power over another, living within the compass of the same family, and called a ward; the power being to be exercised for the benefit of the ward. Now then, what are the cases in which it can be for the benefit of one man, that another, living within the compass of the same family, should exercise power over him? Consider either of the parties by himself, and suppose him, in point of understanding, to be on a level with the other, it seems evident enough that no such cases can ever exist.[287] To the production of happiness on the part of any given person (in like manner as to the production of any other effect which is the result of human agency) three things it is necessary should concur: knowledge, inclination, and physical power. Now as there is no man who is so sure of being *inclined*, on all occasions, to promote your happiness as you yourself are, so neither is there any man who upon the whole can have had so good opportunities as you must have had of *knowing* what is most conducive to that purpose. For who should know so well as you do what it is that gives you pain or pleasure? [288] Moreover, as to power, it is mani-

fest that no superiority in this respect, on the part of a stranger, could, for a constancy, make up for so great a deficiency as he must lie under in respect of two such material points as knowledge and inclination. If then there be a case where it can be for the advantage of one man to be under the power of another, it must be on account of some palpable and very considerable deficiency, on the part of the former, in point of intellects, or (which is the same thing in other words) in point of knowledge or understanding. Now there are two cases in which such palpable deficiency is known to take place. These are, 1. Where a man's intellect is not yet arrived at that state in which it is capable of directing his own inclination in the pursuit of happiness: this is the case of *infancy*.[289] 2. Where by some particular known or unknown circumstance his intellect has either never arrived at that state, or having arrived at it has fallen from it: which is the case of *insanity*.

By what means then is it to be ascertained whether a man's intellect is in that state or no? For exhibiting the quantity of sensible heat in a human body we have a very tolerable sort of instrument, the thermometer; but for exhibiting the quantity of intelligence, we have no such instrument. It is evident, therefore, that the line which separates the quantity of intelligence which *is* sufficient for the purposes of self-government from that which is *not* sufficient, must be, in a great measure, arbitrary. Where the insufficiency is the result of want of age, the sufficient quantity of intelligence, be it what it may, does not accrue to all at the same period of their lives. It becomes therefore necessary for legislators to cut the gordian knot, and fix upon a particular period, at which and not before, truly or not, every person whatever shall be deemed, as far as depends upon age, to be in possession of this sufficient quantity.[290] In this case then a line is drawn which may be the same for every man, and in the description of which, such as it is, whatever persons are concerned may be certain of agreeing: the circumstance of time affording a mark by which the line in question may be traced with the utmost degree of nicety. On the other hand, where the insufficiency is the result of insanity, there is not even this resource: so that here the legislator has no

other expedient than to appoint some particular person or persons to give a particular determination of the question, in every instance in which it occurs, according to his or their particular and arbitrary discretion. Arbitrary enough it must be at any rate, since the only way in which it can be exercised is by considering whether the share of intelligence possessed by the individual in question does or does not come up to the loose and indeterminate idea which persons so appointed may chance to entertain with respect to the quantity which is deemed sufficient.

XLV. *Duration to be given to it.* The line then being drawn, or supposed to be so, it is expedient to a man who cannot, with safety to himself, be left in his own power, that he should be placed in the power of another. How long then should he remain so? Just so long as his inability is supposed to continue: that is, in the case of infancy, till he arrives at that period at which the law deems him to be of full age: in the case of insanity, till he be of sound mind and understanding. Now it is evident, that this period, in the case of infancy, may not arrive for a considerable time: and in the case of insanity, perhaps never. The duration of the power belonging to this trust must therefore, in the one case, be very considerable; in the other case, indefinite.

XLVI. *Powers that may, and duties that ought to be annexed to it.* The next point to consider, is what *may* be the extent of it? for as to what *ought* to be, that is a matter to be settled, not in a general analytical sketch, but in a particular and circumstantial dissertation. By possibility, then, this power may possess any extent that can be imagined: it may extend to any acts which, physically speaking, it may be in the power of the ward to perform himself, or be the object of if exercised by the guardian. Conceive the power, for a moment, to stand upon this footing: the condition of the ward stands now exactly upon a footing with pure slavery. Add the obligation by which the power is turned into a trust: the limits of the power are now very considerably narrowed. What then is the purport of this obligation? Of what nature is the course of conduct it prescribes? It is such a course of conduct as shall be best calculated for procuring to the ward the

greatest quantity of happiness which his faculties, and the circumstances he is in, will admit of: saving always, in the first place, the regard which the guardian is permitted to show to his own happiness; and, in the second place, that which he is obliged, as well as permitted, to show to that of other men. This is, in fact, no other than that course of conduct which the ward, did he but know how, ought, in point of *prudence*, to maintain of himself: so that the business of the former is to govern the latter precisely in the manner in which this latter ought to govern himself. Now to instruct each individual in what manner to govern his own conduct in the details of life, is the particular business of private ethics: to instruct individuals in what manner to govern the conduct of those whose happiness, during nonage, is committed to their charge, is the business of the art of private education. The details, therefore, of the rules to be given for that purpose, any more than the acts which are capable of being committed in violation of those rules, belong not to the art of legislation: since, as will be seen more particularly hereafter,[291] such details could not, with any chance of advantage, be provided for by the legislator. Some general outlines might indeed be drawn by his authority: and, in point of fact, some are in every civilized state. But such regulations, it is evident, must be liable to great variation: in the first place, according to the infinite diversity of civil conditions which a man may stand invested with in any given state: in the next place, according to the diversity of local circumstances that may influence the nature of the conditions which may chance to be established in different states. On this account, the offences which would be constituted by such regulations could not be comprised under any concise and settled denominations, capable of a permanent and extensive application. No place, therefore, can be allotted to them here.

XLVII. *Offences touching the condition of a guardian.* By what has been said, we are the better prepared for taking an account of the offences to which the condition in question stands exposed. Guardianship being a private trust, is of course exposed to those offences, and no others, by which a private trust is liable to be affected. Some of them, however,

on account of the special quality of the trust, will admit of some further particularity of description. In the first place, breach of this species of trust may be termed *mismanagement* of guardianship: in the second place, of whatever nature the duties are which are capable of being annexed to this condition, it must often happen, that in order to fulfil them, it is necessary the guardian should be at a certain particular place. Mismanagement of guardianship, when it consists in the not being, on the occasion in question, at the place in question, may be termed *desertion* of guardianship. Thirdly, It is manifest enough, that the object which the guardian ought to propose to himself, in the exercise of the powers to which those duties are annexed, is to procure for the ward the greatest quantity of happiness which can be procured for him, consistently with the regard which is due to the other interests that have been mentioned: for this is the object which the ward would have proposed to himself, and might and ought to have been allowed to propose to himself, had he been capable of governing his own conduct. Now, in order to procure this happiness, it is necessary that he should possess a certain power over the objects on the use of which such happiness depends. These objects are either the person of the ward himself, or other objects that are extraneous to him. These other objects are either things or persons. As to *things*, then, objects of this class, in as far as a man's happiness depends upon the use of them, are styled his *property*. The case is the same with the services of any *persons* over whom he may happen to possess a beneficial power, or to whose services he may happen to possess a beneficial right. Now when property of any kind, which is in trust, suffers by the delinquency of him with whom it is in trust, such offence, of whatever nature it is in other respects, may be styled *dissipation* in breach of trust: and if it be attended with a profit to the trustee, it may be styled *peculation*.[202] Fourthly, For one person to exercise a power of any kind over another, it is necessary that the latter should either perform certain acts, upon being commanded so to do by the former, or at least should suffer certain acts to be exercised upon himself. In this respect a ward must stand

upon the footing of a servant: and the condition of a ward must, in this respect, stand exposed to the same offences to which that of a servant stands exposed: that is, on the part of a stranger, to *disturbance*, which, in particular circumstances, will amount to *theft*: on the part of the ward, to *breach of duty*: which, in particular circumstances, may be effected by *elopement*. Fifthly, There does not seem to be any offence concerning guardianship that corresponds to *abuse of trust*: I mean in the sense to which the last-mentioned denomination has been here confined.[293] The reason is, that guardianship, being a trust of a private nature, does not, as such, confer upon the trustee any power, either over the persons or over the property of any party, other than the *beneficiary* himself. If by accident it confers on the trustee a power over any persons whose services constitute a part of the property of the beneficiary, the trustee becomes thereby, in certain respects, the master of such servants.[294] Sixthly, Bribery also is a sort of offence to which, in this case, there is not commonly much temptation. It is an offence, however, which by possibility is capable of taking this direction: and must therefore be aggregated to the number of the offences to which the condition of a guardian stands exposed. And thus we have in all seventeen of these offences: viz. 1. Wrongful non-investment of guardianship. 2. Wrongful interception of guardianship. 3. Wrongful divestment of guardianship. 4. Usurpation of guardianship. 5. Wrongful investment of guardianship. 6. Wrongful abdication of guardianship. 7. Detrectation of guardianship. 8. Wrongful imposition of guardianship. 9. Mismanagement of guardianship. 10. Desertion of guardianship. 11. Dissipation in prejudice of wardship. 12. Peculation in prejudice of wardship. 13. Disturbance of guardianship. 14. Breach of duty to guardians. 15. Elopement from guardians. 16. Ward-stealing. 17. Bribery in prejudice of wardship.

XLVIII. *Offences touching the condition of a ward.* Next, with regard to offences to which the condition of wardship is exposed. Those which first affect the existence of the condition itself are as follows: 1. Wrongful non-investment of the condition of a ward. This, if it be the offence of one

who should have been guardian, coincides with wrongf detrectation of guardianship: if it be the offence of a thi person, it involves in it non-investment of guardianshi which, provided the guardianship is, in the eyes of hi who should have been guardian, a desirable thing, is wron ful. 2. Wrongful interception of wardship. This, if it l the offence of him who should have been guardian, coincid with wrongful detrectation of guardianship: if it be tl offence of a third person, it involves in it interception guardianship, which, provided the guardianship is, in the ey of him who should have been guardian, a desirable thing, wrongful. 3. Wrongful divestment of wardship. This, if be the offence of the guardian, but not otherwise, coincid with wrongful abdication of guardianship: if it be the offen of a third person, it involves in it divestment of guardianshi which, if the guardianship is, in the eyes of the guardia a desirable thing, is wrongful. 4. Usurpation of the conc tion of a ward: an offence not very likely to be committe This coincides at any rate with wrongful imposition guardianship; and if the usurper were already under tl guardianship of another guardian, it will involve in it wron ful divestment of such guardianship.[295] 5. Wrongful i vestment of wardship (the wardship being considered as beneficial thing): this coincides with imposition of guar ianship, which, if in the eyes of the pretended guardian tl guardianship should be a burthen, will be wrongful. 6. Wron ful abdication of wardship. This coincides with wrongf divestment of guardianship. 7. Wrongful detrectation wardship. This coincides with wrongful interception guardianship. 8. Wrongful imposition of wardship. This, the offender be the pretended guardian, coincides wi usurpation of guardianship: if a stranger, it involves in wrongful imposition of guardianship. As to such of tl offences relative to this condition, as concern the consequenc of it while subsisting, they are of such a nature that, witho any change of denomination, they belong equally to tl condition of a guardian and that of a ward. We may then fore reckon seventeen sorts of offences relative to the co dition of a ward: 1. Wrongful non-investment of wardshi

2. Wrongful interception of wardship. 3. Wrongful divestment of wardship. 4. Usurpation of wardship. 5. Wrongful investment of wardship. 6. Wrongful abdication of wardship. 7. Wrongful detrectation of wardship. 8. Wrongful imposition of wardship. 9. Mismanagement of guardianship. 10. Desertion of guardianship. 11. Dissipation in prejudice of wardship. 12. Peculation in prejudice of wardship. 13. Disturbance of guardianship. 14. Breach of duty to guardians. 15. Elopement from guardians. 16. Ward-stealing. 17. Bribery in prejudice of wardship.

XLIX. *Offences touching the condition of a parent.* We come now to the offences to which the condition of a parent stands exposed: and first, with regard to those by which the very existence of the condition is affected. On this occasion, in order to see the more clearly into the subject, it will be necessary to distinguish between the natural relationship, and the legal relationship which is superinduced as it were upon the natural one. The natural one being constituted by a particular event, which, either on account of its being already past, or on some other account, is equally out of the power of the law neither is, nor can be made, the subject of an offence. *Is* a man your father? It is not any offence of mine that can make you not his son. Is he *not* your father? It is not any offence of mine that can render him so. But although he does in fact bear that relation to you, I, by an offence of mine, may perhaps so manage matters, that he shall not be *thought* to bear it: which, with respect to any legal advantages which either he or you could derive from such relationship, will be the same thing as if he did not. In the capacity of a witness, I may cause the judges to believe that he is not your father, and to decree accordingly: or, in the capacity of a judge, I may myself decree him not to be your father. Leaving then the purely natural relationship as an object equally out of the reach of justice and injustice, the legal condition, it is evident, will stand exposed to the same offences, neither more nor less, as every other condition, that is capable of being either beneficial or burthensome, stands exposed to. Next, with regard to the exercise of the functions belonging to this condition, con-

sidered as still subsisting. In parentality there must be two persons concerned, the father and the mother. The condition of a parent includes, therefore, two conditions; that of a father, and that of a mother, with respect to such a child. Now it is evident, that between these two parties, whatever beneficiary powers, and other rights, and also whatever obligations, are annexed to the condition of a parent, may be shared in any proportions that can be imagined. But if in these several objects of legal creation each of these two parties have severally a share, and if the interests of all these parties are in any degree provided for, it is evident that each of the parents will stand, with relation to the child, in two several capacities: that of a master, and that of a guardian. The condition of a parent then, in as far as it is the work of law, may be considered as a complex condition, compounded of that of a guardian, and that of a master. To the parent then, in quality of guardian, results a set of duties, involving, as necessary to the discharge of them, certain powers: to the child, in the character of a ward, a set of rights corresponding to the parent's duties, and a set of duties corresponding to his powers. To the parent again, in quality of master, a set of beneficiary powers, without any other necessary limitation (so long as they last) than what is annexed to them by the duties incumbent on him in quality of a guardian: to the child, in the character of a servant, a set of duties corresponding to the parent's beneficiary powers, and without any other necessary limitation (so long as they last) than what is annexed to them by the rights which belong to the child in his capacity of ward. The condition of a parent will therefore be exposed to all the offences to which either that of a guardian or that of a master are exposed: and, as each of the parents will partake, more or less, of both those characters, the offences to which the two conditions are exposed may be nominally, as they will be substantially, the same. Taking them then all together, the offences to which the condition of a parent is exposed will stand as follows: 1. Wrongful non-investment of parentality.[296] 2. Wrongful interception of parentality. 3. Wrongful divestment of parentality. 4. Usurpation of parentality. 5. Wrongful

investment of parentality. 6. Wrongful abdication of parentality. 7. Wrongful detrectation of parentality. 8. Wrongful imposition of parentality. 9. Mismanagement of parental guardianship. 10. Desertion of parental guardianship. 11. Dissipation in prejudice of filial wardship. 12. Peculation in prejudice of filial wardship. 13. Abuse of parental powers. 14. Disturbance of parental guardianship. 15. Breach of duty to parents. 16. Elopement from parents. 17. Child-stealing. 18. Bribery in prejudice of filial wardship.

L. *Offences touching the filial condition.* Next with regard to the offences to which the *filial* condition,[297] the condition of a son or daughter, stands exposed. The principles to be pursued in the investigation of offences of this description have already been sufficiently developed. It will be sufficient, therefore, to enumerate them without further discussion. The only peculiarities by which offences relative to the condition in question stand distinguished from the offences relative to all the preceding conditions, depend upon this one circumstance; viz. that it is certain every one must have had a father and a mother: at the same time that it is not certain that every one must have had a master, a servant, a guardian, or a ward. It will be observed all along, that where a person, from whom, if alive, the benefit would be taken, or on whom the burthen would be imposed, be dead, so much of the mischief is extinct along with the object of the offence. There still, however, remains so much of the mischief as depends upon the advantage or disadvantage which might accrue to persons related, or supposed to be related, in the several remoter degrees, to him in question. The catalogue then of these offences stands as follows: 1. Wrongful non-investment of filiation. This, if it be the offence of him or her who should have been recognised as the parent, coincides with wrongful detrectation of parentality: if it be the offence of a third person, it involves in it non-investment of parentality, which, provided the parentality is, in the eyes of him or her who should have been recognised as the parent, a desirable thing, is wrongful. 2. Wrongful interception of filiation. This, if it be the offence of him or her who should have been recognised as the parent,

coincides with wrongful detrectation of parentality: if it be the offence of a third person, it involves in it interception of parentality, which, provided the parentality is, in the eyes of him or her who should have been recognised as parent, a desirable thing, is wrongful. 3. Wrongful divestment of filiation. This, if it be the offence of him or her who should be recognised as parent, coincides with wrongful abdication of parentality: if it be the offence of a third person, it involves in it divestment of parentality; to wit, of paternity, or of maternity, or of both; which, if the parentality is, in the eyes of him or her who should be recognised as parent, a desirable thing, are respectively wrongful. 4. Usurpation of filiation. This coincides with wrongful imposition of parentality; to wit, either of paternity, or of maternity, or of both: and necessarily involves in it divestment of parentality, which, if the parentality thus divested were, in the eyes of him or her who are thus divested of it, a desirable thing, is wrongful. 5. Wrongful investment of filiation: (the filiation being considered as a beneficial thing). This coincides with imposition of parentality, which, if in the eyes of the pretended father or mother the parentality should be an undesirable thing, will be wrongful. 6. Wrongful abdication of filiation. This necessarily coincides with wrongful divestment of parentality; it also is apt to involve in it wrongful imposition of parentality; though not necessarily either to the advantage or to the prejudice of any certain person. For if a man, supposed at first to be your son, appears afterwards not to be yours, it is certain indeed that he is the son of some other man, but it may not appear who that other man is. 7. Wrongful detrectation of filiation. This coincides with wrongful non-investment or wrongful interception of parentality. 8. Wrongful imposition of filiation. This, if it be the offence of the pretended parent, coincides necessarily with usurpation of parentality: if it be the offence of a third person, it necessarily involves imposition of parentality; as also divestment of parentality: either or both of which, according to the circumstance above mentioned, may or may not be wrongful. 9. Mismanagement of parental guardianship. 10. Desertion of parental guardianship.

11. Dissipation in prejudice of filial wardship. 12. Peculation in prejudice of filial wardship. 13. Abuse of parental power. 14. Disturbance of parental guardianship. 15. Breach of duty to parents. 16. Elopement from parents. 17. Child-stealing. 18. Bribery in prejudice of parental guardianship.

LI. *Condition of a husband.—Powers, duties, and rights, that may be annexed to it.* We shall now be able to apply ourselves with some advantage to the examination of the several offences to which the marital condition, or condition of a husband, stands exposed. A husband is a man, between whom and a certain woman, who in this case is called his wife, there subsists a legal obligation for the purpose of their living together, and in particular for the purpose of a sexual intercourse to be carried on between them. This obligation will naturally be considered in four points of view: 1. In respect of its commencement. 2. In respect of the placing of it. 3. In respect of the nature of it. 4. In respect of its duration. First then, it is evident, that in point of possibility, one method of commencement is as conceivable as another: the time of its commencement might have been marked by one sort of event (by one sort of *signal*, as it may here be called) as well as by another. But in practice the signal has usually been, as in point of utility it ought constantly to be, a contract entered into by the parties: that is, a set of signs, pitched upon by the law, as expressive of their *mutual consent*, to take upon them this condition. Secondly, and thirdly, with regard to the placing of the obligations which are the result of the contract, it is evident that they must rest either solely on one side, or mutually on both. On the first supposition, the condition is not to be distinguished from pure slavery. In this case, either the wife must be the slave of the husband, or the husband of the wife. The first of these suppositions has perhaps never been exemplified; the opposing influence of physical causes being too universal to have ever been surmounted: the latter seems to have been exemplified but too often; perhaps among the first Romans; at any rate, in many barbarous nations. Thirdly, with regard to the nature of the obligations. If they are not suffered to rest all on one side, certain rights are thereby given to the

other. There must, therefore, be rights on both sides. No where there are mutual rights possessed by two persons, against each other, either there are powers annexed to thc rights, or not. But the persons in question are, by the su position, to live together: in which case we have shown, that it is not only expedient, but in a manner necessa that on one side there should be powers. Now it is only one side that powers can be: for suppose them on both sid and they destroy one another. The question is then, which of the parties these powers shall be lodged? we ha shown, that on the principle of utility they ought to lodged in the husband. The powers then which subsist bei lodged in the husband, the next question is, Shall the intere of one party only, or of both, be consulted in the exercise them? it is evident, that on the principle of utility the i terests of both ought alike to be consulted: since in tw persons, taken together, more happiness is producible tha in one. This being the case, it is manifest, that the leg relation which the husband will bear to the wife will be complex one: compounded of that of master and that guardian.

LII. *Offences touching the condition of a husband.* Th offences then to which the condition of a husband will b exposed, will be the sum of those to which the two cond tions of master and guardian are exposed. Thus far the co dition of a husband, with respect to the general outlin of it, stands upon the same footing as that of a parent. Bu there are certain reciprocal services, which being the mai subject of the matrimonial contract, constitute the essenc of the two matrimonial relations, and which neither a maste nor guardian, as such, nor a parent, at any rate, have usuall been permitted to receive. These must of course have bee distinguished from the indiscriminate train of services a large which the husband in his character of master is em powered to exact, and of those which in his character o guardian he is bound to render. Being thus distinguished the offences relative to the two conditions have, in man instances, in as far as they have reference to these peculia services, acquired particular denominations. In the first place

with regard to the contract, from the celebration of which the legal condition dates its existence. It is obvious that in point of possibility, this contract might, on the part of either sex, subsist with respect to several persons of the other sex at the same time: the husband might have any number of wives: the wife might have any number of husbands: the husband might enter into the contract with a number of wives at the same time: or, if with only one at a time, he might reserve to himself a right of engaging in a similar contract with any number, or with only such or such a number of other women afterwards, during the continuance of each former contract. This latter accordingly is the footing upon which, as is well known, marriage is and has been established in many extensive countries: particularly in all those which profess the Mahometan religion. In point of possibility, it is evident that the like liberty might be reserved on the part of the wife: though in point of practice no examples of such an arrangement seem ever to have occurred. Which of all these arrangements is in point of utility the most expedient, is a question which would require too much discussion to answer in the course of an analytical process like the present, and which belongs indeed to the civil branch of legislation, rather than to the penal.[299] In Christian countries, the solemnization of any such contract is made to exclude the solemnization of any subsequent one during the continuance of a former: and the solemnization of any such subsequent contract is accordingly treated as an offence, under the name of *Polygamy*. Polygamy then is at any rate, on the part of the man, a particular modification of that offence which may be styled usurpation of the condition of a husband. As to its other effects, they will be different, according as it was the man only, or the woman only, or both, that were in a state of matrimony at the time of the commission of the offence. If the man only, then his offence involves in it *pro tanto* that of wrongful divestment of the condition of a wife, in prejudice of his prior wife.[300] If the woman only, then it involves in it *pro tanto* that of wrongful divestment of the condition of a husband, in prejudice of her prior husband. If both were already married, it of course involves both the

wrongful divestments which have just been mentioned. An on the other hand also, the converse of all this may b observed with regard to polygamy on the part of the woman Secondly, As the engaging not to enter into any subsequen engagement of the like kind during the continuance of th first, is one of the conditions on which the law lends it sanction to the first; so another is, the inserting as one of th articles of this engagement, an undertaking not to render t or accept from, any other person the services which form th characteristic object of it: the rendering or acceptance of an such services is accordingly treated as an offence, under th name of *adultery*: under which name is also comprised th offence of the stranger, who, in the commission of the abov offence, is the necessary accomplice. Thirdly, Disturbin either of the parties to this engagement, in the possessio of these characteristic services, may, in like manner, b distinguished from the offence of disturbing them in th enjoyment of the miscellaneous advantages derivable fron the same condition; and on whichever side the blame rest whether that of the party, or that of a third person, may b termed *wrongful withholding of connubial services*. And thu we have one-and-twenty sorts of offences to which, as th law stands at present in Christian countries, the condition of a husband stands exposed: viz. 1. Wrongful non-investmen of the condition of a husband. 2. Wrongful interception o the condition of a husband. 3. Wrongful divestment of th condition of a husband. 4. Usurpation of the condition o a husband. 5. Polygamy. 6. Wrongful investment of th condition of a husband. 7. Wrongful abdication of th condition of a husband. 8. Wrongful detrectation of th condition of a husband. 9. Wrongful imposition of the con dition of a husband. 10. Mismanagement of marital guard ianship. 11. Desertion of marital guardianship. 12. Dissipation in prejudice of matrimonial wardship. 13. Peculation in prejudice of matrimonial wardship. 14. Abuse of marital power. 15. Disturbance of marital guardianship. 16. Wrongful withholding of connubial services. 17. Adultery. 18. Breach of duty to husbands. 19. Elopement from husbands.

20. Wife-stealing. 21. Bribery in prejudice of marital guardianship.[801]

LIII. *Offences touching the condition of a wife.* Next with regard to the offences to which the condition of a wife stands exposed. From the patterns that have been exhibited already, the coincidences and associations that take place between the offences that concern the existence of this condition and those which concern the existence of the condition of a husband, may easily enough be apprehended without farther repetitions. The catalogue of those now under consideration will be precisely the same in every article as the catalogue last exhibited.

LIV. Thus much for the several sorts of offences relative to the several sorts of domestic conditions: those which are constituted by such natural relations as are contiguous being included. There remain those which are uncontiguous: of which, after so much as has been said of the others, it will naturally be expected that some notice should be taken. These, however, do not afford any of that matter which is necessary to constitute a condition. In point of fact, no power seems ever to be annexed to any of them. A grandfather, perhaps, may be called by the law to take upon him the guardianship of his orphan grandson: but then the power he has belongs to him not as grandfather, but as guardian. In point of possibility, indeed, power might be annexed to these relations, just as it might to any other. But still no new sort of domestic condition would result from it: since it has been shown that there can be no others, that, being constituted by power, shall be distinct from those which have been already mentioned. Such as they are, however, they have this in common with the before-mentioned relations, that they are capable of importing either benefit or burthen: they therefore stand exposed to the several offences whereby those or any other relations are liable to be affected in point of existence. It might be expected, therefore, that in virtue of these offences, they should be added to the list of the relations which are liable to be objects of delinquency. But the fact is, that they already stand included in it: and although not expressly named, yet as effectually as if they were.

On the one hand, it is only by affecting such or such a contiguous relation that any offence affecting uncontiguous relations can take place. On the other hand, neither can any offence affecting the existence of the contiguous relations be committed, without affecting the existence of an indefinite multitude of such as are uncontiguous. A false witness comes, and causes it to be believed that you are the son of a woman, who, in truth, is not your mother. What follows? An endless tribe of other false persuasions—that you are the grandson of the father and of the mother of this supposed mother: that you are the son of some husband of hers, or, at least, of some man with whom she has cohabited: the grandson of his father and his mother; and so on: the brother of their other children, if they have any: the brother-in-law of the husbands and wives of those children, if married: the uncle of the children of those children: and so on.—On the other hand, that you are not the son of your real mother, nor of your real father: that you are not the grandson of either of your real grandfathers or grandmothers; and so on without end: all which persuasions result from, and are included in, the one original false persuasion of your being the son of this your pretended mother.

It should seem, therefore, at first sight, that none of the offences against these uncontiguous relations could ever come expressly into question: for by the same rule that one ought, so it might seem ought a thousand others: the offences against the uncontiguous being merged as it were in those which affect the contiguous relations. So far, however, is this from being the case, that in speaking of an offence of this stamp, it is not uncommon to hear a great deal said of this or that uncontiguous relationship which it affects, at the same time that no notice at all shall be taken of any of those which are contiguous. How happens this? Because, to the uncontiguous relation are annexed perhaps certain remarkable advantages or disadvantages, while to all the intermediate relations none shall be annexed which are in comparison worth noticing. Suppose Antony or Lepidus to have contested the relationship of Octavius (afterwards Augustus) to Caius Julius Cæsar. How could it have been done? It

could only have been by contesting, either Octavius's being the son of Atia, or Atia's being the daughter of Julia, or Julia's being the daughter of Lucius Julius Cæsar, or Lucius Julius Cæsar's being the father of Caius. But to have been the son of Atia, or the grandson of Julia, or the great grandson of Lucius Julius Cæsar, was, in comparison, of small importance. Those intervening relationships were, comparatively speaking, of no other use to him than in virtue of their being so many necessary links in the genealogical chain which connected him with the sovereign of the empire.

As to the advantages and disadvantages which may happen to be annexed to any of those uncontiguous relationships, we have seen already that no powers over the correlative person, nor any corresponding obligations, are of the number. Of what nature then can they be? They are, in truth, no other than what are the result either of local and accidental institutions, or of some spontaneous bias that has been taken by the moral sanction. It would, therefore, be to little purpose to attempt tracing them out *a priori* by any exhaustive process: all that can be done is, to pick up and lay together some of the principal articles in each catalogue by way of specimen. The advantages which a given relationship is apt to impart, seem to be referable chiefly to the following heads: 1. Chance of succession to the property, or a part of the property, of the correlative person. 2. Chance of pecuniary support, to be yielded by the correlative person, either by appointment of law, or by spontaneous donation. 3. Accession of legal rank; including any legal privileges which may happen to be annexed to it: such as capacity of holding such and such beneficial offices; exemption from such and such burthensome obligations; for instance, paying taxes, serving burthensome offices, &c. &c. 4. Accession of rank by courtesy; including the sort of reputation which is customarily and spontaneously annexed to distinguished birth and family alliance: whereon may depend the chance of advancement in the way of marriage, or in a thousand other ways less obvious. The disadvantages which a given relation is liable to impart, seem to be referable chiefly to the following heads: 1. Chance of being obliged, either by law, or by force of

the moral sanction, to yield pecuniary support to the correlative party. 2. Loss of legal rank: including the legal disabilities, as well as the burthensome obligations, which the law is apt to annex, sometimes with injustice enough, to the lower stations. 3. Loss of rank by courtesy: including the loss of the advantages annexed by custom to such rank. 4. Incapacity of contracting matrimony with the correlative person, where the supposed consanguinity or affinity lies within the prohibited degrees.[302]

LV. *Civil conditions.* We come now to civil conditions: these, it may well be imagined, may be infinitely various: as various as the acts which a man may be either commanded or allowed, whether for his own benefit, or that of others, to abstain from or to perform. As many different denominations as there are of persons distinguished with a view to such commands and allowances (those denominations only excepted which relate to the conditions above spoken of under the name of domestic ones) so many civil conditions one might enumerate. Means however, more or less explicit, may be found out of circumscribing their infinitude.

What the materials are, if so they may be called, of which conditions, or any other kind of legal possession, can be made up, we have already seen: beneficial powers, fiduciary powers, beneficial rights, fiduciary rights, relative duties, absolute duties. But as many conditions as import a power or right of the fiduciary kind, as possessed by the person whose condition is in question, belong to the head of trusts. The catalogue of the offences to which these conditions are exposed, coincides therefore exactly with the catalogue of offences against trust: under which head they have been considered in a general point of view under the head of offences against trust: and such of them as are of a domestic nature, in a more particular manner in the character of offences against the several domestic conditions. Conditions constituted by such duties of the relative kind, as have for their counterparts trusts constituted by fiduciary powers, as well as rights on the side of the correlative party, and those of a private nature, have also been already discussed under the appellation of domestic conditions. The same observation may be

applied to the conditions constituted by such powers of the beneficial kind over persons as are of a private nature: as also to the subordinate correlative conditions constituted by the duties corresponding to those rights and powers. As to absolute duties, there is no instance of a condition thus created, of which the institution is upon the principle of utility to be justified; unless the several religious conditions of the monastic kind should be allowed of as examples. There remain, as the only materials out of which the conditions which yet remain to be considered can be composed, conditions constituted by beneficial powers over things; conditions constituted by beneficial rights to things (that is, rights to powers over things) or by rights to those rights, and so on; conditions constituted by rights to services; and conditions constituted by the duties corresponding to those respective rights. Out of these are to be taken those of which the materials are the ingredients of the several modifications of property, the several conditions of proprietorship. These are the conditions, if such for a moment they may be styled, which having but here and there any specific names, are not commonly considered on the footing of conditions: so that the acts which, if such conditions were recognised, might be considered as offences against those conditions, are not wont to be considered in any other light than that of offences against property.

Now the case is, as hath been already intimated,[808] that of these civil conditions, those which are wont to be considered under that name, are not distinguished by any uniform and explicit line from those of which the materials are wont to be carried to the head of property: a set of rights shall, in one instance, be considered as constituting an article of property rather than a condition: while, in another instance, a set of rights of the same stamp is considered as constituting rather a condition than an article of property. This will probably be found to be the case in all languages: and the usage is different again in one language from what it is in another. From these causes it seems to be impracticable to subject the class of civil conditions to any exhaustive method: so that for making a complete collection of them

there seems to be no other expedient than that of searching the language through for them, and taking them as they come. To exemplify this observation, it may be of use to lay open the structure as it were of two or three of the principal sorts of classes of conditions, comparing them with two or three articles of property which appear to be nearly of the same complexion: by this means the nature and generation, if one may so call it, of both these classes of ideal objects may be the more clearly understood.

The several sorts of civil conditions that are not fiduciary may all, or at least the greater part of them, be comprehended under the head of *rank*, or that of *profession;* the latter word being taken in its most extensive sense, so as to include not only what are called the liberal professions, but those also which are exercised by the several sorts of traders, artists, manufacturers, and other persons of whatsoever station, who are in the way of making a profit by their labour. Among ranks then, as well as professions, let us, for the sake of perspicuity, take for examples such articles as stand the clearest from any mixture of either fiduciary or beneficial power. The rank of knighthood is constituted, how? by prohibiting all other persons from performing certain acts, the performance of which is the symbol of the order, at the same time that the knight in question, and his companions, are permitted: for instance, to wear a ribbon of a certain colour in a certain manner: to call himself by a certain title: to use an armorial seal with a certain mark on it. By laying all persons but the knight under this prohibition, the law subjects them to a set of duties: and since from the discharge of these duties a benefit results to the person in whose favour they are created, to wit, the benefit of enjoying such a share of extraordinary reputation and respect as men are wont to yield to a person thus distinguished, to discharge them is to render him a service: and the duty being a duty of the negative class, a duty consisting in the performance of certain acts of the negative kind,[804] the service is what may be called *a service of forbearance*. It appears then, that to generate this condition there must be two sorts of services: that which is the immediate cause of it, a service of the negative kind,

to be rendered by the community at large: that which is the cause again of this service, a service of the positive kind, to be rendered by the law.

The condition of a professional man stands upon a narrower footing. To constitute this condition there needs nothing more than a permission given him on the part of the legislator to perform those acts, in the performance of which consists the exercise of his profession: to give or sell his advice or assistance in matters of law or physic: to give or sell his services as employed in the executing or overseeing of a manufacture or piece of work of such or such a kind: to sell a commodity of such or such a sort. Here then we see there is but one sort of service requisite; a service which may be merely of the negative kind, to be rendered by the law: the service of permitting him to exercise his profession: a service which, if there has been no prohibition laid on before, is rendered by simply forbearing to prohibit him.

Now the ideal objects, which in the cases above specified are said to be conferred upon a man by the services that are respectively in question, are in both cases not articles of property but conditions. By such a behaviour on the part of the law, as shall be the reverse of that whereby they were respectively produced, a man may be made to forfeit them: and what he is then said to forfeit is in neither case his property; but in one case, his rank or dignity: in the other case, his trade or his profession: and in both cases, his condition.

Other cases there are again in which the law, by a process of the same sort with that by which it constituted the former of the two above-mentioned conditions, confers on him an ideal object, which the laws of language have placed under the head of property. The law permits a man to sell books: that is, all sorts of books in general. Thus far all that it has done is to invest him with a condition: and this condition he would equally possess, although everybody else in the world were to sell books likewise. Let the law now take an active part in his favour, and prohibit all other persons from selling books of a certain description, he remaining at liberty to sell them as before. It therefore confers on him

a sort of exclusive privilege or monopoly, which is called a *copy-right*. But by investing him with this right, it is not said to invest him with any new sort of condition: what it invests him with is spoken of as an article of property; to wit, of that sort of property which is termed incorporeal: [305] and so on in the case of an engraving, a mechanical engine, a medicine; or, in short, of a saleable article of any other sort. Yet when it gave him an exclusive right of wearing a particular sort of ribbon, the object which it was then considered as conferring on him was not an article of property but a condition.

By forbearing to subject you to certain disadvantages, to which it subjects an alien, the law confers on you the condition of a natural-born subject: by subjecting him to them, it imposes on him the condition of an alien: by conferring on you certain privileges or rights, which it denies to a *roturier*, the law confers on you the condition of a *gentilhomme*; by forbearing to confer on him those privileges, it imposes on him the condition of a *roturier*.[306] The rights, out of which the two advantageous conditions here exemplified are both of them as it were composed, have for their counterpart a sort of services of forbearance, rendered, as we have seen, not by private individuals, but by the law itself. As to the duties which it creates in rendering you these services, they are to be considered as duties imposed by the legislator on the ministers of justice.

It may be observed, with regard to the greater part of the conditions here comprised under the general appellation of *civil*, that the relations corresponding to those by which they are respectively constituted, are not provided with appellatives. The relation which has a name, is that which is borne by the party favoured to the party bound: that which is borne by the party bound to the party favoured has not any. This is a circumstance that may help to distinguish them from those conditions which we have termed domestic. In the domestic conditions, if on the one side the party *to* whom the power is given is called a master; on the other side, the party *over* whom that power is given, the party who is the object of that power, is termed a servant. In the

civil conditions this is not the case. On the one side, a man, in virtue of certain services of forbearance, which the rest of the community are bound to render him, is denominated a knight of such or such an order: but on the other side, these services do not bestow any particular denomination on the persons from whom such services are due. Another man, in virtue of the legislator's rendering that sort of negative service which consists in the not prohibiting him from exercising a trade, invests him at his option with the condition of a trader: it accordingly denominates him a farmer, a baker, a weaver, and so on: but the ministers of the law do not, in virtue of their rendering the man this sort of negative service, acquire for themselves any particular name. Suppose even that the trade you have the right of exercising happens to be the object of a monopoly, and that the legislator, besides rendering you himself those services which you derive from the permission he bestows on you, obliges other persons to render you those farther services which you receive from their forbearing to follow the same trade; yet neither do they, in virtue of their being thus bound, acquire any particular name.

After what has been said of the nature of the several sorts of civil conditions that have names, the offences to which they are exposed may, without much difficulty, be imagined. Taken by itself, every condition which is thus constituted by a permission granted to the possessor, is of course of a beneficial nature: it is, therefore, exposed to all those offences to which the possession of a benefit is exposed. But either on account of a man's being obliged to persevere when once engaged in it, or on account of such other obligations as may stand annexed to the possession of it, or on account of the comparative degree of disrepute which may stand annexed to it by the moral sanction, it may by accident be a burthen: it is on this account liable to stand exposed to the offences to which, as hath been seen, every thing that partakes of the nature of a burthen stands exposed. As to any offences which may concern the exercise of the functions belonging to it, if it happens to have any duties annexed to it, such as those, for instance, which are constituted by regulations

touching the exercise of a trade, it will stand exposed to so many breaches of duty; and lastly, whatsoever are the functions belonging to it, it will stand exposed at any rate to *disturbance*.

In the forming however of the catalogue of these offences, exactness is of the less consequence, inasmuch as an act, if it should happen not to be comprised in this catalogue, and yet is in any respect of a pernicious nature, will be sure to be found in some other division of the system of offences: if a baker sells bad bread for the price of good, it is a kind of fraud upon the buyer; and perhaps an injury of the simple corporal kind done to the health of an individual, or a neighbourhood: if a clothier sells bad cloth for good at home, it is a fraud; if to foreigners abroad, it may, over and above the fraud put upon the foreign purchaser, have pernicious effects perhaps in the prosperity of the trade at home, and become thereby an offence against the national wealth. So again with regard to *disturbance*: if a man be disturbed in the exercise of his trade, the offence will probably be a wrongful *interception of the profit* he might be presumed to have been in a way to make by it: and were it even to appear in any case that a man exercised a trade, or what is less unlikely, a liberal profession, without having profit in his view, the offence will still be reducible to the head of *simple injurious restrainment*, or *simple injurious compulsion*.

§ 4. *Advantages of the present method.*

LVI. *General idea of the method here pursued.* A few words, for the purpose of giving a general view of the method of division here pursued, and of the advantages which it possesses, may have their use. The whole system of offences, we may observe, is branched out into five classes. In the three first, the subordinate divisions are taken from the same source; viz. from the consideration of the different points, in respect whereof the interest of an individual is exposed to suffer. By this uniformity, a considerable degree of light seems to be thrown upon the whole system; particularly upon the offences that come under the third class: objects which have never

hitherto been brought into any sort of order. With regard to the fourth class, in settling the precedence between its several subordinate divisions, it seemed most natural and satisfactory to place those first, the connection whereof with the welfare of individuals seemed most obvious and immediate. The mischievous effects of those offences, which tend in an immediate way to deprive individuals of the protection provided for them against the attacks of one another, and of those which tend to bring down upon them the attacks of foreign assailants, seem alike obvious and palpable. The mischievous quality of such as tend to weaken the force that is provided to combat those attacks, but particularly the latter, though evident enough, is one link farther off in the chain of causes and effects. The ill effects of such offenses as are of disservice only by diminishing the particular fund from whence that force is to be extracted, such effects, I say, though indisputable, are still more distant and out of sight. The same thing may be observed with regard to such as are mischievous only by affecting the universal fund. Offences against the sovereignty in general would not be mischievous, if offences of the several descriptions preceding were not mischievous. Nor in a temporal view are offences against religion mischievous, except in as far as, by removing, or weakening, or misapplying one of the three great incentives to virtue, and checks to vice, they tend to open the door to the several mischiefs, which it is the nature of all those other offences to produce. As to the fifth class, this, as hath already been observed, exhibits, at first view, an irregularity, which however seems to be unavoidable. But this irregularity is presently corrected, when the analysis returns back, as it does after a step or two, into the path from which the tyranny of language had forced it a while to deviate.

It was necessary that it should have two purposes in view: the one, to exhibit, npon a scale more or less minute, a systematical enumeration of the several possible modifications of delinquency, denominated or undenominated; the other, to find places in the list for such names of offences as were in current use: for the first purpose, nature was to set

the law; for the other, custom. Had the nature of the things themselves been the only guide, every such difference in the manner of perpetration, and such only, should have served as a ground for a different denomination, as was attended with a difference in point of effect. This however of itself would never have been sufficient; for as on one hand the new language, which it would have been necessary to invent, would have been uncouth, and in a manner unintelligible: so on the other hand the names, which were before in current use, and which, in spite of all systems, good or bad, must have remained in current use, would have continued unexplained. To have adhered exclusively to the current language, would have been as bad on the other side; for in that case the catalogue of offences, when compared to that of the mischiefs that are capable of being produced, would have been altogether broken and uncomplete.

To reconcile these two objects, in as far as they seemed to be reconcilable, the following course has therefore been pursued. The logical whole, constituted by the sum total of possible offences, has been bisected in as many different directions as were necessary, and the process in each direction carried down to that stage at which the particular ideas thus divided found names in current use in readiness to receive them. At that period I have stopped; leaving any minuter distinctions to be enumerated in the body of the work, as so many species of the genus characterised by such or such a name. If in the course of any such process I came to a mode of conduct which, though it required to be taken notice of, and perhaps had actually been taken notice of, under all laws, in the character of an offence, had hitherto been expressed under different laws, by different circumlocutions, without ever having received any name capable of occupying the place of a substantive in a sentence, I have frequently ventured so far as to fabricate a new name for it, such an one as the idiom of the language, and the acquaintance I happened to have with it, would admit of. These names consisting in most instances, and that unavoidably, of two or three words brought together, in a language to which admits not, like the German and the Greek, of their

being melted into one, can never be upon a par, in point of commodiousness, with those univocal appellatives which make part of the established stock.

In the choice of names in current use, care has been taken to avoid all such as have been grounded on local distinctions, ill founded perhaps in the nation in which they received their birth, and at any rate not applicable to the circumstances of other countries.

The analysis, as far as it goes, is as applicable to the legal concerns of one country as of another: and where, if it had descended into further details, it would have ceased to be so, there I have taken care always to stop: and thence it is that it has come to be so much more particular in the class of offences against individuals, than in any of the other classes. One use then of this arrangement, if it should be found to have been properly conducted, will be its serving to point out in what it is that the legal interests of all countries agree, and in what it is that they are liable to differ: how far a rule that is proper for one, will serve, and how far it will not serve, for another. That the legal interests of different ages and countries have nothing in common, and that they have every thing, are suppositions equally distant from the truth.[307]

LVII. *Its advantages.*—1. *It is convenient for the apprehension and the memory.* A natural method, such as it hath been here attempted to exhibit, seems to possess four capital advantages; not to mention others of inferior note. In the first place, it affords such assistance to the apprehension and to the memory, as those faculties would in vain look for in any technical arrangement.[308] That arrangement of the objects of any science may, it should seem, be termed a *natural* one, which takes such properties to characterise them by, as men in general are, by the common constitution of man's nature, independently of any accidental impressions they may have received from the influence of any local or other particular causes, accustomed to attend to: such, in a word, as *naturally*, that is readily and at first sight, engage, and firmly fix, the attention of any one to whom they have once been pointed out. Now by what other means should an object

engage or fix a man's attention, unless by interesting him? and what circumstance belonging to any action can be more interesting, or rather what other circumstance belonging to it can be at all interesting to him, than that of the influence it promises to have on his own happiness, and the happiness of those who are about him? By what other mark then should he more easily find the place which any offence occupies in the system, or by what other clue should he more readily recall it?

LVIII. —2. *It gives room for general propositions.* In the next place, it not only gives at first glance a general intimation of the nature of each division of offences, in as far as that nature is determined by some one characteristic property, but it gives room for a number of general propositions to be formed concerning the particular offences that come under that division, in such manner as to exhibit a variety of other properties that may belong to them in common. It gives room, therefore, for the framing of a number of propositions concerning them, which, though very general, because predicated of a great number of articles, shall be as generally true.[809]

LIX. —3. *It points out the reason of the law.* In the third place, it is so contrived, that the very place which any offence is made to occupy, suggests the reason of its being put there. It serves to indicate not only that such and such arts *are* made offences, but *why* they *ought* to be. By this means, while it addresses itself to the understanding, it recommends itself in some measure to the affections. By the intimation it gives of the nature and tendency of each obnoxious act, it accounts for, and in some measure vindicates, the treatment which it may be thought proper to bestow upon that act in the way of punishment. To the subject then it is a kind of perpetual apology: showing the necessity of every defalcation, which, for the security and prosperity of each individual, it is requisite to make from the liberty of every other. To the legislator it is a kind of perpetual lesson: serving at once as a corrective to his prejudices, and as a check upon his passions. Is there a mischief which has escaped him? in a natural arrangement, if at the same time an ex-

haustive one, he cannot fail to find it. Is he tempted ever to force innocence within the pale of guilt? the difficulty of finding a place for it advertises him of his error. Such are the uses of a map of universal delinquency, laid down upon the principle of utility: such the advantages, which the legislator as well as the subject may derive from it. Abide by it, and every thing that is arbitrary in legislation vanishes. An evil-intentioned or prejudiced legislator durst not look it in the face. He would proscribe it, and with reason: it would be a satire on his laws.

LX. —*4. It is alike applicable to the laws of all nations.* In the fourth place, a natural arrangement, governed as it is by a principle which is recognised by all men, will serve alike for the jurisprudence of all nations. In a system of proposed law, framed in pursuance of such a method, the language will serve as a glossary by which all systems of positive law might be explained, while the matter serves as a standard by which they might be tried. Thus illustrated, the practice of every nation might be a lesson to every other: and mankind might carry on a mutual interchange of experiences and improvements as easily in this as in every other walk of science. If any one of these objects should in any degree be attained, the labour of this analysis, severe as it has been, will not have been thrown away.

§ 5. *Characters of the five classes.*

LXI. *Characters of the classes, how deducible from the above method.* It has been mentioned [310] as an advantage possessed by this method, and not possessed by any other, that the objects comprised under it are cast into groups, to which a variety of propositions may be applied in common. A collection of these propositions, as applied to the several classes, may be considered as exhibiting the distinctive characters of each class. So many of these propositions as can be applied to the offences belonging to any given class, so many properties are they found to have in common: so many of these common properties as may respectively be attributed to them, so many properties may be set down to

serve as *characters* of the class. A collection of these characters it may here be proper to exhibit. The more of them we can bring together, the more clearly and fully will the nature of the several classes, and of the offences they are composed of, be understood.

LXII. *Characters of Class* 1. Characters of Class 1; composed of PRIVATE offences, or offences against assignable *individuals*.

1. When arrived at their last stage (the stage of *consummation*) [811] they produce, all of them, a primary mischief as well as a secondary.[812]

2. The individuals whom they affect in the first instance [813] are constantly *assignable*. This extends to all; to *attempts* and *preparations*, as well as to such as have arrived at the stage of consummation.[814]

3. Consequently they admit of *compensation:* [815] in which they differ from the offences of all the other classes, as such.

4. They admit [816] also of *retaliation;* [817] in which also they differ from the offences of all the other classes.

5. There is always some person who has a natural and peculiar interest to prosecute them. In this they differ from self-regarding offences: also from semi-public and public ones; except in as far as the two latter may chance to involve a private mischief.

6. The mischief they produce is obvious: more so than that of semi-public offences: and still more so than that of self-regarding ones, or even public.

7. They are every where, and must ever be, obnoxious to the censure of the world: more so than semi-public offences as such; and still more so than public ones.

8. They are more *constantly* obnoxious to the censure of the world than self-regarding offences: and would be so universally, were it not for the influence of the two false principles; the principle of asceticism, and the principle of antipathy.[818]

9. They are less apt than semi-public and public offences to require different descriptions [819] in different states and countries: in which respect they are much upon a par with self-regarding ones.

10. By certain circumstances of aggravation, they are liable to be transformed into semi-public offences; and by certain others, into public.

11. There can be no ground for punishing them, until they can be proved to have occasioned, or to be about to occasion, some particular mischief to some particular individual. In this they differ from semi-public offences, and from public.

12. In slight cases, *compensation* given to the individual affected by them may be a sufficient ground for remitting punishment: for if the primary mischief has not been sufficient to produce any alarm, the whole of the mischief may be cured by compensation. In this also they differ from semi-public offences, and from public ones.

LXIII. *Characters of Class* 2. Characters of Class 2; composed of SEMI-PUBLIC offences, or offences affecting a whole subordinate *class* of persons.

1. As such, they produce no primary mischief. The mischief they produce consists of one or other or both branches of the secondary mischief produced by offences against individuals, without the primary.

2. In as far as they are to be considered as belonging to this class, the persons whom they affect in the first instance are not individually assignable.

3. They are apt, however, to involve or terminate in some primary mischief of the first order; which when they do, they advance into the first class, and become private offences.

4. They admit not, as such, of compensation.

5. Nor of retaliation.

6. As such, there is never any one particular individual whose exclusive interest it is to prosecute them: a circle of persons may, however, always be marked out, within which may be found some who have a greater interest to prosecute than any who are out of that circle have.

7. The mischief they produce is in general pretty obvious: not so much so indeed as that of private offences, but more so upon the whole than that of self-regarding and public ones.

8. They are rather less obnoxious to the censure of the world than private offences; but they are more so than public ones: they would also be more so than self-regarding ones,

were it not for the influence of the two false principles, the principle of sympathy and antipathy, and that of asceticism.

9. They are more apt than private and self-regarding offences to require different descriptions in different countries: but less so than public ones.

10. There may be ground for punishing them before they have been proved to have occasioned, or to be about to occasion, mischief to any particular individual; which is not the case with private offences.

11. In no cases can satisfaction given to any particular individual affected by them be a sufficient ground for remitting punishment: for by such satisfaction it is but a part of the mischief of them that is cured. In this they differ from private offences; but agree with public.

LXIV. *Characters of Class* 3. Characters of Class 3; consisting of SELF-REGARDING offences: offences against *one's self*.

1. In individual instances it will often be questionable, whether they are productive of any primary [820] mischief at all: secondary, they produce none.

2. They affect not any other individuals, assignable or not assignable, except in as far as they affect the offender himself; unless by possibility in particular cases; and in a very slight and distant manner the whole state.

3. They admit not, therefore, of *compensation*.

4. Nor of *retaliation*.

5. No person has naturally any peculiar interest to prosecute them: except in as far as in virtue of some *connection* he may have with the offender, either in point of *sympathy* or of *interest*,[821] a mischief of the *derivative* kind [822] may happen to devolve upon him.[823]

6. The mischief they produce is apt to be unobvious and in general more questionable than that of any of the other classes.[824]

7. They are however apt, many of them, to be more obnoxious to the censure of the world than public offences; owing to the influence of the two false principles; the principle of asceticism, and the principle of antipathy. Some of

them more even than semi-public, or even than private offence.

8. They are less apt than offences of any other class to require different descriptions in different states and countries.[325]

9. Among the inducements[326] to punish them, antipathy against the offender is apt to have a greater share than sympathy for the public.

10. The best plea for punishing them is founded on a faint probability there may be of their being productive of a mischief, which, if real, will place them in the class of public ones: chiefly in those divisions of it which are composed of offences against population, and offences against the national wealth.

LXV. *Characters of Class 4.* Characters of Class 4; consisting of PUBLIC offences, or offences against *the state* in general.

1. As such, they produce not any primary mischief; and the secondary mischief they produce, which consists frequently of danger without alarm, though great in *value*, is in *specie* very indeterminate.

2. The individuals whom they affect, in the first instance, are constantly unassignable; except in as far as by accident they happen to involve or terminate in such or such offences against individuals.

3. Consequently they admit not of compensation.

4. Nor of retaliation.

5. Nor is there any person who has naturally any particular interest to prosecute them; except in as far as they appear to affect the power, or in any other manner the private interest, of some person in authority.

6. The mischief they produce, as such, is comparatively unobvious; much more so than that of private offences, and more so likewise, than that of semi-public ones.

7. They are, as such, much less obnoxious to the censure of the world, than private offences; less even than semi-public, or even than self-regarding offences; unless in particular cases, through sympathy to certain persons in authority, whose private interests they may appear to affect.

8. They are more apt than any of the other classes to admit of different descriptions, in different states and countries.

9. They are constituted, in many cases, by some circumstances of aggravation superadded to a private offence: and therefore, in these cases, involve the mischief and exhibit the other characters belonging to both classes. They are however, even in such cases, properly enough ranked in the 4th class, inasmuch as the mischief they produce in virtue of the properties which aggregate them to that class, eclipses and swallows up that which they produce in virtue of those properties which aggregate them to the 1st.

10. There may be sufficient ground for punishing them, without their being proved to have occasioned, or to be about to occasion, any particular mischief to any particular individual. In this they differ from private offences, but agree with semi-public ones. Here, as in semi-public offences, the *extent* of the mischief makes up for the *uncertainty* of it.

11. In no case can satisfaction, given to any particular individual affected by them, be a sufficient ground for remitting punishment. In this they differ from private offences; but agree with semi-public.

LXVI. *Characters of Class* 5. Characters of Class 5, or appendix: composed of MULTIFORM or ANOMALOUS offences; and containing offences by FALSEHOOD, and offences concerning TRUST.

1. Taken collectively, in the parcels marked out by their popular appellations, they are incapable of being aggregated to any systematical method of distribution, grounded upon the mischief of the offence.

2. They may, however, be thrown into sub-divisions, which may be aggregated to such a method of distribution.

3. These sub-divisions will naturally and readily rank under the divisions of the several preceding classes of this system.

4. Each of the two great divisions of this class spreads itself in that manner over all the preceding classes.

5. In some acts of this class, the distinguishing circumstance which constitutes the essential character of the offence, will in some instances enter necessarily, in the character of a criminative circumstance, into the constitution of the of-

fence; insomuch that, without the intervention of this circumstance, no offence at all, of that denomination, can be committed.[827] In other instances, the offence may subsist without it; and where it interferes, it comes in as an accidental independent circumstance, capable of constituting a ground of aggravation.[828]

CHAPTER XVII.

OF THE LIMITS OF THE PENAL BRANCH OF JURISPRUDENCE.

§ 1. *Limits between Private Ethics and the Art of Legislation.*

I. *Use of this chapter.* So much for the division of offences in general. Now an offence is an act prohibited, or (what comes to the same thing) an act of which the contrary is commanded, by the law: and what is it that the law can be employed in doing, besides prohibiting and commanding? It should seem then, according to this view of the matter, that were we to have settled what may be proper to be done with relation to offences, we should thereby have settled every thing that may be proper to be done in the way of law. Yet that branch which concerns the method of dealing with offences, and which is termed sometimes the *criminal*, sometimes the *penal*, branch, is universally understood to be but one out of two branches which compose the whole subject of the art of legislation; that which is termed the *civil* being the other.[329] Between these two branches then, it is evident enough, there cannot but be a very intimate connection; so intimate is it indeed, that the limits between them are by no means easy to mark out. The case is the same in some degree between the whole business of legislation (civil and penal branches taken together) and that of private ethics. Of these several limits however it will be in a manner necessary to exhibit some idea: lest, on the one hand, we should seem to leave any part of the subject that *does* belong to us untouched, or, on the other hand, to deviate on any side into a track which does not belong to us.

In the course of this enquiry, that part of it I mean which

concerns the limits between the civil and the penal branch of law, it will be necessary to settle a number of points, of which the connection with the main question might not at first sight be suspected. To ascertain what sort of a thing *a* law is; what the *parts* are that are to be found in it; what it must contain in order to be *complete*; what the connection is between that part of a body of laws which belongs to the subject of *procedure* and the rest of the law at large:—all these, it will be seen, are so many problems, which must be solved before any satisfactory answer can be given to the main question above mentioned.

Nor is this their only use: for it is evident enough, that the notion of a complete law must first be fixed, before the legislator can in any case know what it is he has to do, or when his work is done.

II. *Ethics in general, what.* Ethics at large may be defined, the art of directing men's actions to the production of the greatest possible quantity of happiness, on the part of those whose interest is in view.

III. *Private ethics.* What then are the actions which it can be in a man's power to direct? They must be either his own actions, or those of other agents. Ethics, in as far as it is the art of directing a man's own actions, may be styled the *art of self-government*, or *private ethics*.

IV. *The art of government: that is, of legislation and administration.* What other agents then are there, which, at the same time that they are under the influence of man's direction, are susceptible of happiness? They are of two sorts: 1. Other human beings who are styled persons. 2. Other animals, which, on account of their interests having been neglected by the insensibility of the ancient jurists, stand degraded into the class of *things*.[880] As to other human beings, the art of directing their actions to the above end is what we mean, or at least the only thing which, upon the principle of utility, we *ought* to mean, by the art of government: which, in as far as the measures it displays itself in are of a permanent nature, is generally distinguished by the name of *legislation*: as it is by that of *administration*, when they are of a temporary nature, determined by the occurrences of the day.

V. *Art of education.* Now human creatures, considered with respect to the maturity of their faculties, are either in an *adult*, or in a *non-adult* state. The art of government, in as far as it concerns the direction of the actions of persons in a non-adult state, may be termed the art of *education*. In as far as this business is entrusted with those who, in virtue of some private relationship, are in the main the best disposed to take upon them, and the best able to discharge, this office, it may be termed the art of *private education*: in as far as it is exercised by those whose province it is to superintend the conduct of the whole community, it may be termed the art of *public education*.

VI. *Ethics exhibits the rules of, 1. Prudence. 2. Probity. 3. Beneficence.* As to ethics in general, a man's happiness will depend, in the first place, upon such parts of his behaviour as none but himself are interested in; in the next place, upon such parts of it as may affect the happiness of those about him. In as far as his happiness depends upon the first-mentioned part of his behaviour, it is said to depend upon his *duty to himself*. Ethics then, in as far as it is the art of directing a man's actions in this respect, may be termed the art of discharging one's duty to one's self: and the quality which a man manifests by the discharge of this branch of duty (if duty it is to be called) is that of *prudence*. In as far as his happiness, and that of any other person or persons whose interests are considered, depends upon such parts of his behaviour as may affect the interests of those about him, it may be said to depend upon his *duty to others*; or, to use a phrase now somewhat antiquated, his *duty to his neighbour*. Ethics then, in as far as it is the art of directing a man's actions in this respect, may be termed the art of discharging one's duty to one's neighbour. Now the happiness of one's neighbour may be consulted in two ways: 1. In a negative way, by forbearing to diminish it. 2. In a positive way, by studying to increase it. A man's duty to his neighbour is accordingly partly negative and partly positive: to discharge the negative branch of it, is *probity*: to discharge the positive branch, *beneficence*.

VII. *Probity and beneficence, how they connect with prudence.* It may here be asked, How it is that upon the princi-

ple of private ethics, legislation and religion out of the question, a man's happiness depends upon such parts of his conduct as affect, immediately at least, the happiness of no one but himself: this is as much as to ask, What motives (independent of such as legislation and religion may chance to furnish) can one man have to consult the happiness of another? by what motives, or, which comes to the same thing, by what obligations, can he be bound to obey the dictates of *probity* and *beneficence*? In answer to this, it cannot but be admitted, that the only interests which a man at all times and upon all occasions is sure to find *adequate* motives for consulting, are his own. Notwithstanding this, there are no occasions in which a man has not some motives for consulting the happiness of other men. In the first place, he has, on all occasions, the purely social motive of sympathy or benevolence: in the next place, he has, on most occasions, the semi-social motives of love of amity and love of reputation. The motive of sympathy will act upon him with more or less effect, according to the *bias* of his sensibility: [331] the two other motives, according to a variety of circumstances, principally according to the strength of his intellectual powers, the firmness and steadiness of his mind, the quantum of his moral sensibility, and the characters of the people he has to deal with.

VIII. *Every act which is a proper object of ethics is not of legislation.* Now private ethics has happiness for its end: and legislation can have no other. Private ethics concerns every member, that is, the happiness and the actions of every member, of any community that can be proposed; and legislation can concern no more. Thus far, then, private ethics and the art of legislation go hand in hand. The end they have, or ought to have, in view, is of the same nature. The persons whose happiness they ought to have in view, as also the persons whose conduct they ought to be occupied in directing, are precisely the same. The very acts they ought to be conversant about, are even in a *great measure* the same. Where then lies the difference? In that the acts which they ought to be conversant about, though in a great measure, are not *perfectly and throughout* the same. There is no case in which a

private man ought not to direct his own conduct to the production of his own happiness, and of that of his fellow-creatures: but there are cases in which the legislator ought not (in a direct way at least, and by means of punishment applied immediately to particular *individual* acts) to attempt to direct the conduct of the several other members of the community. Every act which promises to be beneficial upon the whole to the community (himself included) each individual ought to perform of himself: but it is not every such act that the legislator ought to compel him to perform. Every act which promises to be pernicious upon the whole to the community (himself included) each individual ought to abstain from of himself: but it is not every such act that the legislator ought to compel him to abstain from.

IX. *The limits between the provinces of private ethics and legislation, marked out by the cases unmeet for punishment.* Where then is the line to be drawn?—We shall not have far to seek for it. The business is to give an idea of the cases in which ethics ought, and in which legislation ought not (in a direct manner at least) to interfere. If legislation interferes in a direct manner, it must be by punishment.[882] Now the cases in which punishment, meaning the punishment of the political sanction, ought not to be inflicted, have been already stated.[883] If then there be any of these cases in which, although legislation ought not, private ethics does or ought to interfere, these cases will serve to point out the limits between the two arts or branches of science. These cases, it may be remembered, are of four sorts: 1. Where punishment would be groundless. 2. Where it would be inefficacious. 3. Where it would be unprofitable. 4. Where it would be needless. Let us look over all these cases, and see whether in any of them there is room for the interference of private ethics, at the same time that there is none for the direct interference of legislation.

X. 1. *Neither ought to apply where punishment is* groundless. First then, as to the cases where punishment would be *groundless*. In these cases it is evident, that the restrictive interference of ethics would be groundless too. It is because, upon the whole, there is no evil in the act, that legislation

ought not to endeavour to prevent it. No more, for the same reason, ought private ethics.

XI. 2. *How far private ethics can apply in the cases where punishment would be* inefficacious. As to the cases in which punishment would be *inefficacious*. These, we may observe, may be divided into two sets or classes. The first do not depend at all upon the nature of the act: they turn only upon a defect in the timing of the punishment. The punishment in question is no more than what, for any thing that appears, ought to have been applied to the act in question. It ought, however, to have been applied at a different time; viz. not till after it had been properly denounced. These are the cases of an *ex-post-facto* law; of a judicial sentence beyond the law; and of a law not sufficiently promulgated. The acts here in question then might, for anything that appears, come properly under the department even of coercive legislation: of course do they under that of private ethics. As to the other set of cases, in which punishment would be inefficacious; neither do these depend upon the nature of the act, that is, of the *sort* of act: they turn only upon some extraneous *circumstances*, with which an act of *any* sort may chance to be accompanied. These, however, are of such a nature as not only to exclude the application of legal punishment, but in general to leave little room for the influence of private ethics. These are the cases where the will could not be deterred from any act, even by the extraordinary force of artificial punishment: as in the cases of extreme infancy, insanity, and perfect intoxication: of course, therefore, it could not by such slender and precarious force as could be applied by private ethics. The case is in this respect the same, under the circumstances of unintentionality with respect to the event of the action, unconsciousness with regard to the circumstances, and missupposal with regard to the existence of circumstances which have not existed; as also where the force, even of extraordinary punishment, is rendered inoperative by the superior force of a physical danger or threatened mischief. It is evident, that in these cases, if the thunders of the law prove impotent, the whispers of simple morality can have but little influence.

XII. 3. *How far, where it would be* unprofitable. As to the

cases where punishment would be *unprofitable*. These are the cases which constitute the great field for the exclusive interference of private ethics. When a punishment is unprofitable, or in other words too expensive, it is because the evil of the punishment exceeds that of the offence. Now the evil of the punishment, we may remember,[884] is distinguishable into four branches: 1. The evil of coercion, including constraint or restraint, according as the act commanded is of the positive kind or the negative. 2. The evil of apprehension. 3. The evil of sufferance. 4. The derivative evils resulting to persons in *connection* with those by whom the three above-mentioned original evils are sustained. Now with respect to those original evils, the persons who lie exposed to them may be two very different sets of persons. In the first place, persons who may have actually committed, or been prompted to commit, the acts really meant to be prohibited. In the next place, persons who may have performed, or been prompted to perform, such other acts as they fear may be in danger of being involved in the punishment designed only for the former. But of these two sets of acts, it is the former only that are pernicious: it is, therefore, the former only that it can be the business of private ethics to endeavour to prevent. The latter being by the supposition not mischievous, to prevent them is what it can no more be the business of ethics to endeavour at, than of legislation. It remains to show how it may happen, that there should be acts really pernicious, which, although they may very properly come under the censure of private ethics, may yet be no fit objects for the legislator to control.

XIII. *Which it may be, 1. Although confined to the guilty.* Punishment then, as applied to delinquency, may be unprofitable in both or either of two ways: 1. By the expense it would amount to, even supposing the application of it to be confined altogether to delinquency: 2. By the danger there may be of its involving the innocent in the fate designed only for the guilty. First then, with regard to the cases in which the expense of the punishment, as applied to the guilty, would outweigh the profit to be made by it. These cases, it is evident, depend upon a certain proportion between the evil of the punishment and the evil of the offence. Now were the of-

fence of such a nature, that a punishment which, in point of *magnitude*, should but just exceed the profit of it, would be sufficient to prevent it, it might be rather difficult perhaps to find an instance in which such punishment would clearly appear to be unprofitable. But the fact is, there are many cases in which a punishment, in order to have any chance of being efficacious, must, in point of magnitude, be raised a great deal above that level. Thus it is, wherever the danger of detection is, or, what comes to the same thing, is likely to appear to be, so small, as to make the punishment appear in a high degree uncertain. In this case it is necessary, as has been shown,[335] if punishment be at all applied, to raise it in point of magnitude as much as it falls short in point of certainty. It is evident, however, that all this can be but guess-work: and that the effect of such a proportion will be rendered precarious, by a variety of circumstances: by the want of sufficient promulgation on the part of the law: [336] by the particular circumstances of the temptation: [337] and by the circumstances influencing the sensibility of the several individuals who are exposed to it.[338] Let the *seducing* motives be strong, the offence then will at any rate be frequently committed. Now and then indeed, owing to a coincidence of circumstances more or less extraordinary, it will be detected, and by that means punished. But for the purpose of example, which is the principal one, an act of punishment, considered in itself, is of no use: what use it can be of, depends altogether upon the expectation it raises of similar punishment, in future cases of similar delinquency. But this future punishment, it is evident, must always depend upon detection. If then the want of detection is such as must in general (especially to eyes fascinated by the force of the seducing motives) appear too improbable to be reckoned upon, the punishment, though it should be inflicted, may come to be of no use. Here then will be two opposite evils running on at the same time, yet neither of them reducing the quantum of the other: the evil of the disease and the evil of the painful and inefficacious remedy. It seems to be partly owing to some such considerations, that fornication, for example, or the illicit commerce between the sexes, has commonly either gone altogether unpunished, or been pun-

ished in a degree inferior to that in which, on other accounts, legislators might have been disposed to punish it.

XIV. 2. *By enveloping the innocent.* Secondly, with regard to the cases in which political punishment, as applied to delinquency, may be unprofitable, in virtue of the danger there may be of its involving the innocent in the fate designed only for the guilty. Whence should this danger then arise? From the difficulty there may be of fixing the idea of the guilty action: that is, of subjecting it to such a definition as shall be clear and precise enough to guard effectually against misapplication. This difficulty may arise from either of two sources: the one permanent, to wit, the nature of the *actions* themselves: the other occasional, I mean the qualities of the *men* who may have to deal with those actions in the way of government. In as far as it arises from the latter of these sources, it may depend partly upon the use which the *legislator* may be *able* to make of language; partly upon the use which, according to the apprehension of the legislator, the *judge* may be *disposed* to make of it. As far as legislation is concerned, it will depend upon the degree of perfection to which the arts of language may have been carried, in the first place, in the nation in general; in the next place, by the *legislator* in particular. It is to a sense of this difficulty, as it should seem, that we may attribute the caution with which most legislators have abstained from subjecting to censure, on the part of the law, such actions as come under the notion of rudeness, for example, or treachery, or ingratitude. The attempt to bring acts of so vague and questionable a nature under the control of law, will argue either a very immature age, in which the difficulties which give birth to that danger are not descried; or a very enlightened age, in which they are overcome.[889]

XV. *Legislation how far necessary for the enforcement of the dictates of* prudence. For the sake of obtaining the clearer idea of the limits between the art of legislation and private ethics, it may now be time to call to mind the distinctions above established with regard to ethics in general. The degree in which private ethics stands in need of the assistance of legislation, is different in the three branches of duty above distinguished. Of the rules of moral duty, those which seem

to stand least in need of the assistance of legislation are the rules of *prudence*. It can only be through some defect on the part of the understanding, if a man be ever deficient in point of duty to himself. If he does wrong, there is nothing else that it can be owing to but either some *inadvertence* [340] or some *mis-supposal* [340] with regard to the circumstances on which his happiness depends. It is a standing topic of complaint, that a man knows too little of himself. Be it so: but is it so certain that the legislator must know more? [341] It is plain, that of individuals the legislator can know nothing: concerning those points of conduct which depend upon the particular circumstances of each individual, it is plain, therefore, that he can determine nothing to advantage. It is only with respect to those broad lines of conduct in which all persons, or very large and permanent descriptions of persons, may be in a way to engage, that he can have any pretence for interfering; and even here the propriety of his interference will, in most instances, lie very open to dispute. At any rate, he must never expect to produce a perfect compliance by the mere force of the sanction of which he is himself the author. All he can hope to do, is to increase the efficacy of private ethics, by giving strength and direction to the influence of the moral sanction. With what chance of success, for example, would a legislator go about to extirpate drunkenness and fornication by dint of legal punishment? Not all the tortures which ingenuity could invent would compass it: and, before he had made any progress worth regarding, such a mass of evil would be produced by the punishment, as would exceed, a thousandfold, the utmost possible mischief of the offence. The great difficulty would be in the procuring evidence; an object which could not be attempted, with any probability of success, without spreading dismay through every family,[342] tearing the bonds of sympathy asunder,[343] and rooting out the influence of all the social motives. All that he can do then, against offences of this nature, with any prospect of advantage, in the way of direct legislation, is to subject them, in cases of notoriety, to a slight censure, so as thereby to cover them with a slight shade of artificial disrepute.

XVI. —*Apt to go too far in this respect.* It may be ob-

served, that with regard to this branch of duty, legislators have, in general, been disposed to carry their interference full as far as is expedient. The great difficulty here is, to persuade them to confine themselves within bounds. A thousand little passions and prejudices have led them to narrow the liberty of the subject in this line, in cases in which the punishment is either attended with no profit at all, or with none that will make up for the expense.

XVII. —*Particularly in matters of religion.* The mischief of this sort of interference is more particularly conspicuous in the article of religion. The reasoning, in this case, is of the following stamp. There are certain errors, in matters of belief, to which all mankind are prone: and for these errors in judgment, it is the determination of a Being of infinite benevolence, to punish them with an infinity of torments. But from these errors the legislator himself is necessarily free: for the men, who happen to be at hand for him to consult with, being men perfectly enlightened, unfettered, and unbiassed, have such advantages over all the rest of the world, that when they sit down to enquire out the truth relative to points so plain and so familiar as those in question, they cannot fail to find it. This being the case, when the sovereign sees his people ready to plunge headlong into an abyss of fire, shall he not stretch out a hand to save them? Such, for example, seems to have been the train of reasoning, and such the motives, which led Lewis the XIVth into those coercive measures which he took for the conversion of heretics and the confirmation of true believers. The ground-work, pure sympathy and loving-kindness: the superstructure, all the miseries which the most determined malevolence could have devised.[844] But of this more fully in another place.[845]

XVIII. —*How far necessary for the enforcement of the dictates of probity.* The rules of *probity* are those, which in point of expediency stand most in need of assistance on the part of the legislator, and in which, in point of fact, his interference has been most extensive. There are few cases in which it *would* be expedient to punish a man for hurting *himself*: but there are few cases, if any, in which it would *not* be expedient to punish a man for injuring his neighbour. With regard to

that branch of probity which is opposed to offences against property, private ethics depends in a manner for its very existence upon legislation. Legislation must first determine what things are to be regarded as each man's property, before the general rules of ethics, on this head, can have any particular application. The case is the same with regard to offences against the state. Without legislation there would be no such thing as a *state:* no particular persons invested with powers to be exercised for the benefit of the rest. It is plain, therefore, that in this branch the interference of the legislator cannot any where be dispensed with. We must first know what are the dictates of legislation, before we can know what are the dictates of private ethics.[346]

XIX. —*of the dictates of beneficence.* As to the rules of beneficence, these, as far as concerns matters of detail, must necessarily be abandoned in great measure to the jurisdiction of private ethics. In many cases the beneficial quality of the act depends essentially upon the disposition of the agent; that is, upon the motives by which he appears to have been prompted to perform it: upon their belonging to the head of sympathy, love of amity, or love of reputation; and not to any head of self-regarding motives, brought into play by the force of political constraint: in a word, upon their being such as denominate his conduct *free* and *voluntary*, according to one of the many senses given to those ambiguous expressions.[347] The limits of the law on this head seem, however, to be capable of being extended a good deal farther than they seem ever to have been extended hitherto. In particular, in cases where the person is in danger, why should it not be made the duty of every man to save another from mischief, when it can be done without prejudicing himself, as well as to abstain from bringing it on him? This accordingly is the idea pursued in the body of the work.[348]

XX. *Difference between private ethics and the art of legislation recapitulated.* To conclude this section, let us recapitulate and bring to a point the difference between private ethics, considered as an art or science, on the one hand, and that branch of jurisprudence which contains the art or science of legislation, on the other. Private ethics teaches how each man

may dispose himself to pursue the course most conducive to his own happiness, by means of such motives as offer of themselves: the art of legislation (which may be considered as one branch of the science of jurisprudence) teaches how a multitude of men, composing a community, may be disposed to pursue that course which upon the whole is the most conducive to the happiness of the whole community, by means of motives to be applied by the legislator.

We come now to exhibit the limits between penal and civil jurisprudence. For this purpose it may be of use to give a distinct though summary view of the principal branches into which jurisprudence, considered in its utmost extent, is wont to be divided.

§ 2. *Jurisprudence, its branches.*

XXI. *Jurisprudence, expository—censorial.* Jurisprudence is a fictitious entity: nor can any meaning be found for the word, but by placing it in company with some word that shall be significative of a real entity. To know what is meant by jurisprudence, we must know, for example, what is meant by a book of jurisprudence. A book of jurisprudence can have but one or the other of two objects: 1. To ascertain what the *law*[849] is: 2. To ascertain what it ought to be. In the former case it may be styled a book of *expository* jurisprudence; in the latter, a book of *censorial* jurisprudence: or, in other words, a book on the *art of legislation.*

XXII. *Expository jurisprudence, authoritative—unauthoritative.* A book of expository jurisprudence, is either *authoritative* or *unauthoritative.* It is styled authoritative, when it is composed by him who, by representing the state of the law to be so and so, causeth it so to be; that is, of the legislator himself: unauthoritative, when it is the work of any other person at large.

XXIII. *Sources of the distinctions yet remaining.* Now *law*, or *the law*, taken indefinitely, is an abstract and collective term; which, when it means any thing, can mean neither more nor less than the sum total of a number of individual laws taken together.[850] It follows, that of whatever other modi-

fications the subject of a book of jurisprudence is susceptible, they must all of them be taken from some circumstance or other of which such individual laws, or the assemblages into which they may be sorted, are susceptible. The circumstances that have given rise to the principal branches of jurisprudence we are wont to hear of, seem to be as follows: 1. The *extent* of the laws in question in point of dominion. 2. The *political quality* of the persons whose conduct they undertake to regulate. 3. The *time* of their being in force. 4. The manner in which they are *expressed*. 5. The concern which they have with the article of *punishment*.

XXIV. *Jurisprudence, local—universal.* In the first place, in point of extent, what is delivered concerning the laws in question, may have reference either to the laws of such or such a nation or nations in particular, or to the laws of all nations whatsoever: in the first case, the book may be said to relate to *local*, in the other, to *universal, jurisprudence*.

Now of the infinite variety of nations there are upon the earth, there are no two which agree exactly in their laws: certainly not in the whole: perhaps not even in any single article: and let them agree to-day, they would disagree to-morrow. This is evident enough with regard to the *substance* of the laws: and it would be still more extraordinary if they agreed in point of *form;* that is, if they were conceived in precisely the same strings of words. What is more, as the languages of nations are commonly different, as well as their laws, it is seldom that, strictly speaking, they have so much as a single *word* in common. However, among the words that are appropriated to the subject of law, there are some that in all languages are pretty exactly correspondent to one another: which comes to the same thing nearly as if they were the same. Of this stamp, for example, are those which correspond to the words *power, right, obligation, liberty*, and many others.

It follows, that if there are any books which can, properly speaking, be styled books of universal jurisprudence, they must be looked for within very narrow limits. Among such as are expository, there can be none that are authoritative: nor even, as far as the *substance* of the laws is concerned, any that

are unauthoritative. To be susceptible of an universal application, all that a book of the expository kind can have to treat of, is the import of words: to be, strictly speaking, universal it must confine itself to terminology. Accordingly the definitions which there has been occasion here and there to intersperse in the course of the present work, and particularly the definition hereafter given of the word *law*, may be considered as matter belonging to the head of universal jurisprudence. Thus far in strictness of speech: though in point of usage where a man, in laying down what he apprehends to be the law, extends his views to a few of the nations with which his own is most connected, it is common enough to consider what he writes as relating to universal jurisprudence.

It is in the censorial line that there is the greatest room for disquisitions that apply to the circumstances of all nations alike: and in this line what regards the substance of the laws in question is as susceptible of an universal application, as what regards the words. That the laws of all nations, or even of any two nations, should coincide in all points, would be as ineligible as it is impossible: some leading points, however, there seem to be, in respect of which the laws of all civilised nations might, without inconvenience, be the same. To mark out some of these points will, as far as it goes, be the business of the body of this work.

XXV. —*internal and international*. In the second place, with regard to the *political quality* of the persons whose conduct is the object of the law. These may, on any given occasion, be considered either as members of the same state, or as members of different states: in the first case, the law may be referred to the head of *internal*, in the second case, to that of *international*[851] jurisprudence.

Now as to any transactions which may take place between individuals who are subjects of different states, these are regulated by the internal laws, and decided upon by the internal tribunals, of the one or the other of those states: the case is the same where the sovereign of the one has any immediate transactions with a private member of the other: the sovereign reducing himself, *pro re natâ*, to the condition of a private

person, as often as he submits his cause to either tribunal; whether by claiming a benefit, or defending himself against a burthen. There remain then the mutual transactions between sovereigns, as such, for the subject of that branch of jurisprudence which may be properly and exclusively termed *international*.[352]

With what degree of propriety rules for the conduct of persons of this description can come under the appellation of *laws*, is a question that must rest till the nature of the thing called *a law* shall have been more particularly unfolded.

It is evident enough, that international jurisprudence may, as well as internal, be censorial as well as expository, unauthoritative as well as authoritative.

XXVI. *Internal jurisprudence, national and provincial, local or particular.* Internal jurisprudence, again, may either concern all the members of a state indiscriminately, or such of them only as are connected in the way of residence, or otherwise, with a particular district. Jurisprudence is accordingly sometimes distinguished into *national* and *provincial*. But as the epithet *provincial* is hardly applicable to districts so small as many of those which have laws of their own are wont to be, such as towns, parishes, and manors; the term *local* (where universal jurisprudence is plainly out of the question) or the term *particular*, though this latter is not very characteristic, might either of them be more commodious.[353]

XXVII. *Jurisprudence, ancient—living.* Thirdly, with respect to *time*. In a work of the expository kind, the laws that are in question may either be such as are still in force at the time when the book is writing, or such as have ceased to be in force. In the latter case the subject of it might be termed *ancient*; in the former, *present* or *living* jurisprudence: that is, if the substantive *jurisprudence*, and no other, must at any rate be employed, and that with an epithet in both cases. But the truth is, that a book of the former kind is rather a book of history than a book of jurisprudence; and, if the word *jurisprudence* be expressive of the subject, it is only with some such words as *history* or *antiquities* prefixed. And as the laws which are any where in question are supposed, if

nothing appears to the contrary, to be those which are in force, no such epithet as that of *present* or *living* commonly appears.

Where a book is so circumstanced, that the laws which form the subject of it, though in force at the time of its being written, are in force no longer, that book is neither a book of living jurisprudence, nor a book on the history of jurisprudence: it is no longer the former, and it never was the latter. It is evident that, owing to the changes which from time to time must take place, in a greater or less degree, in every body of laws, every book of jurisprudence, which is of an expository nature, must in the course of a few years, come to partake more or less of this condition.

The most common and most useful object of a history of jurisprudence, is to exhibit the circumstances that have attended the establishment of laws actually in force. But the exposition of the dead laws which have been superseded, is inseparably interwoven with that of the living ones which have superseded them. The great use of both these branches of *science*, is to furnish examples for the *art* of legislation.[354]

XXVIII. *Jurisprudence, statutory—customary.* Fourthly, in point of *expression*, the laws in question may subsist either in the form of *statute* or in that of *customary* law.

As to the difference between these two branches (which respects only the article of form or expression) it cannot properly be made appear till some progress has been made in the definition of a law.

XXIX. *Jurisprudence, civil—penal—criminal.* Lastly, The most intricate distinction of all, and that which comes most frequently on the carpet, is that which is made between the *civil* branch of jurisprudence and the *penal*, which latter is wont, in certain circumstances, to receive the name of *criminal*.

Question concerning the distinction between the civil branch and the penal, stated. What is a penal code of laws? What a civil code? Of what nature are their contents? Is it that there are two sorts of laws, the one penal the other civil, so that the laws in a penal code are all penal laws, while the laws in a civil code are all civil laws? Or is it, that in every

law there is some matter which is of a penal nature, and which therefore belongs to the penal code; and at the same time other matter which is of a civil nature, and which therefore belongs to the civil code? Or is it, that some laws belong to one code or the other exclusively, while others are divided between the two? To answer these questions in any manner that shall be tolerably satisfactory, it will be necessary to ascertain what *a law* is; meaning one entire but single law: and what are the parts into which a law, as such, is capable of being distinguished: or, in other words, to ascertain what the properties are that are to be found in every object which can with propriety receive the appellation of *a* law. This then will be the business of the third and fourth sections: what concerns the import of the word *criminal*, as applied to law, will be discussed separately in the fifth.[355]

NOTES

PREFACE
(1789)

[1] For example.—*It is worse to lose than simply not to gain*—*A loss falls the lighter by being divided.*—*The suffering, of a person hurt in gratification of enmity, is greater than the gratification produced by the same cause.*—These, and a few others which he will have occasion to exhibit at the head of another publication, have the same claim to the appellation of axioms, as those given by mathematicians under that name; since, referring to universal experience as their immediate basis, they are incapable of demonstration, and require only to be developed and illustrated, in order to be recognised as incontestable.

[2] The first edition was published in 1789, in quarto.

[3] A Fragment on Government, &c., reprinted 1822.

[4] Such as obligation, right, power, possession, title, exemption, immunity, franchise, privilege, nullity, validity, and the like.

[5] To the aggregate of them a common denomination has since been allotted—*the rationale*.

CHAPTER I.

[1] Note by the Author, July 1822.

To this denomination has of late been added, or substituted, the *greatest happiness* or *greatest felicity* principle: this for shortness, instead of saying at length *that principle* which

states the greatest happiness of all those whose interest is in question, as being the right and proper, and only right and proper and universally desirable, end of human action: of human action in every situation, and in particular in that of a functionary or set of functionaries exercising the powers of Government. The word *utility* does not so clearly point to the ideas of *pleasure* and *pain* as the words *happiness* and *felicity* do: nor does it lead us to the consideration of the *number*, of the interests affected; to the *number*, as being the circumstance, which contributes, in the largest proportion, to the formation of the standard here in question; the *standard of right and wrong*, by which alone the propriety of human conduct, in every situation, can with propriety be tried. This want of a sufficiently manifest connexion between the ideas of *happiness* and *pleasure* on the one hand, and the idea of *utility* on the other, I have every now and then found operating, and with but too much efficiency, as a bar to the acceptance, that might otherwise have been given, to this principle.

[2] *A principle, what.* The word principle is derived from the Latin principium: which seems to be compounded of the two words *primus*, first, or chief, and *cipium*, a termination which seems to be derived from *capio*, to take, as in *mancipium*, *municipium*; to which are analogous, *auceps*, *forceps*, and others. It is a term of very vague and very extensive signification: it is applied to any thing which is conceived to serve as a foundation or beginning to any series of operations: in some cases, of physical operations; but of mental operations in the present case.

The principle here in question may be taken for an act of the mind; a sentiment; a sentiment of approbation; a sentiment which, when applied to an action, approves of its utility, as that quality of it by which the measure of approbation or disapprobation bestowed upon it ought to be governed.

[3] Interest is one of those words, which not having any superior *genus*, cannot in the ordinary way be defined.

[4] 'The principle of utility, (I have heard it said) is a dangerous principle: it is dangerous on certain occasions to consult it.' This is as much as to say, what? that it is not con-

sonant to utility, to consult utility: in short, that it is *not* consulting it, to consult it.

Addition by the Author, July 1822.

Not long after the publication of the Fragment on Government, anno 1776, in which, in the character of an all-comprehensive and all-commanding principle, the principle of *utility* was brought to view, one person by whom observation to the above effect was made was *Alexander Wedderburn*, at that time Attorney or Solicitor General, afterwards successively Chief Justice of the Common Pleas, and Chancellor of England, under the successive titles of Lord Loughborough and Earl of Rosslyn. It was made—not indeed in my hearing, but in the hearing of a person by whom it was almost immediately communicated to me. So far from being self-contradictory, it was a shrewd and perfectly true one. By that distinguished functionary, the state of the Government was thoroughly understood: by the obscure individual, at that time not so much as supposed to be so: his disquisitions had not been as yet applied, with any thing like a comprehensive view, to the field of Constitutional Law, nor therefore to those features of the English Government, by which the greatest happiness of the ruling *one* with or without that of a favoured few, are now so plainly seen to be the only ends to which the course of it has at any time been directed. The *principle of utility* was an appellative, at that time employed—employed by me, as it had been by others, to designate that which, in a more perspicuous and instructive manner, may, as above, be designated by the name of the *greatest happiness principle*. 'This principle (said Wedderburn) is a dangerous one.' Saying so, he said that which, to a certain extent, is strictly true: a principle, which lays down, as the only *right* and justifiable end of Government, the greatest happiness of the greatest number—how can it be denied to be a dangerous one? dangerous it unquestionably is, to every government which has for its *actual* end or object, the greatest happiness of a certain *one*, with or without the addition of some comparatively small number of others, whom it is matter of pleasure or accommodation to him to admit, each of them, to a share in the con-

cern, on the footing of so many junior partners. *Dangerous* it therefore really was, to the interest—the sinister interest—of all those functionaries, himself included, whose interest it was, to maximize delay, vexation, and expense, in judicial and other modes of procedure, for the sake of the profit, extractible out of the expense. In a Government which had for its end in view the greatest happiness of the greatest number, Alexander Wedderburn might have been Attorney General and then Chancellor: but he would not have been Attorney General with £15,000 a year, nor Chancellor, with a peerage with a veto upon all justice, with £25,000 a year, and with 500 sinecures at his disposal, under the name of Ecclesiastical Benefices, besides *et cæteras*.

CHAPTER II.

[5] *Asceticism, origin of the word. Principles of the Monks.* Ascetic is a term that has been sometimes applied to Monks. It comes from a Greek word which signifies *exercise*. The practices by which Monks sought to distinguish themselves from other men were called their Exercises. These exercises consisted in so many contrivances they had for tormenting themselves. By this they thought to ingratiate themselves with the Deity. For the Deity, said they, is a Being of infinite benevolence: now a Being of the most ordinary benevolence is pleased to see others make themselves as happy as they can: therefore to make ourselves as unhappy as we can is the way to please the Deity. If any body asked them, what motive they could find for doing all this? Oh! said they, you are not to imagine that we are punishing ourselves for nothing: we know very well what we are about. You are to know, that for every grain of pain it costs us now, we are to have a hundred grains of pleasure by and by. The case is, that God loves to see us torment ourselves at present: indeed he has as good as told us so. But this is done only to try us, in order just to see how we should behave: which it is plain he could not know, without making the experiment. Now then, from the satisfaction it gives him to see us make ourselves as unhappy as we can make ourselves in this present life, we have a sure

proof of the satisfaction it will give him to see us as happy as he can make us in a life to come.

[6] The following Note was first printed in January 1789.

It ought rather to have been styled, more extensively, the principle of *caprice*. Where it applies to the choice of actions to be marked out for injunction or prohibition, for reward or punishment, (to stand, in a word, as subjects for *obligations* to be imposed,) it may indeed with propriety be termed, as in the text, the principle of *sympathy* and *antipathy*. But this appellative does not so well apply to it, when occupied in the choice of the *events* which are to serve as sources of *title* with respect to *rights*: where the actions prohibited and allowed the obligations and rights, being already fixed, the only question is, under what circumstances a man is to be invested with the one or subjected to the other? from what incidents occasion is to be taken to invest a man, or to refuse to invest him, with the one, or to subject him to the other? In this latter case it may more appositely be characterized by the name of the *phantastic principle*. Sympathy and antipathy are affections of the *sensible* faculty. But the choice of *titles* with respect to *rights*, especially with respect to proprietary rights, upon grounds unconnected with utility, has been in many instances the work, not of the affections but of the imagination.

When, in justification of an article of English Common Law, calling uncles to succeed in certain cases in preference to fathers, Lord Coke produced a sort of ponderosity he had discovered in rights, disqualifying them from ascending in a straight line, it was not that he *loved* uncles particularly, or *hated* fathers, but because the analogy, such as it was, was what his imagination presented him with, instead of a reason, and because, to a judgment unobservant of the standard of utility, or unacquainted with the art of consulting it, where affection is out of the way, imagination is the only guide.

When I know not what ingenious grammarian invented the proposition *Delegatus non potest delegare*, to serve as a rule of law, it was not surely that he had any antipathy to delegates of the second order, or that it was any pleasure to him to think of the ruin which, for want of a manager at

home, may befal the affairs of a traveller, whom an unforeseen accident has deprived of the object of his choice: it was, that the incongruity, of giving the same law to objects so contrasted as *active* and *passive* are, was not to be surmounted, and that *-atus* chimes, as well as it contrasts, with *-are*.

When that inexorable maxim, (of which the dominion is no more to be defined, than the date of its birth, or the name of its father, is to be found,) was imported from England for the government of Bengal, and the whole fabric of judicature was crushed by the thunders of *ex post facto* justice, it was not surely that the prospect of a blameless magistracy perishing in prison afforded any enjoyment to the unoffended authors of their misery; but that the music of the maxim, absorbing the whole imagination, had drowned the cries of humanity along with the dictates of common sense.† *Fiat Justitia, ruat cœlum*, says another maxim, as full of extravagance as it is of harmony: Go heaven to wreck—so justice be but done:—and what is the ruin of kingdoms, in comparison of the wreck of heaven?

So again, when the Prussian chancellor, inspired with the wisdom of I know not what Roman sage, proclaimed in good Latin, for the edification of German ears, *Servitus servitutis non datur*, [Cod. Fred. tom. ii. par. 2. liv. 2. tit. x. § 6. p. 308.] it was not that he had conceived any aversion to the lifeholder who, during the continuance of his term, should wish to gratify a neighbour with a right of way or water, or to the neighbour who should wish to accept of the indulgence; but that, to a jurisprudential ear, *-tus -tutis* sound little less melodious than *-atus -are*. Whether the melody of the maxim was the real reason of the rule, is not left open to dispute: for it is ushered in by the conjunction *quia*, reason's appointed harbinger: *quia servitus servitutis non datur*.

Neither would equal melody have been produced, nor indeed could similar melody have been called for, in either of these instances, by the opposite provision: it is only when they are opposed to general rules, and not when by their conformity they are absorbed in them, that more specific ones can obtain a separate existence. *Delegatus potest delegare*, and *Servitus servitutis datur*, provisions already included under

the general adoption of contracts, would have been as unnecessary to the apprehension and the memory, as, in comparison of their energetic negatives, they are insipid to the ear.

Were the inquiry diligently made, it would be found that the goddess of harmony has exercised more influence, however latent, over the dispensations of Themis, than her most diligent historiographers, or even her most passionate panegyrists, seem to have been aware of. Every one knows, how, by the ministry of Orpheus, it was she who first collected the sons of men beneath the shadow of the sceptre: yet, in the midst of continual experience, men seem yet to learn, with what successful diligence she has laboured to guide it in its course. Every one knows, that measured numbers were the language of the infancy of law: none seem to have observed, with what imperious sway they have governed her maturer age. In English jurisprudence in particular, the connexion betwixt law and music, however less perceived than in Spartan legislation, is not perhaps less real nor less close. The music of the Office, though not of the same kind, is not less musical in its kind, than the music of the Theatre; that which hardens the heart, than that which softens it:—sostenutos as long, cadences as sonorous; and those governed by rules, though not yet promulgated, not less determinate. Search indictments, pleadings, proceedings in chancery, conveyances: whatever trespasses you may find against truth or common sense, you will find none against the laws of harmony. The English Liturgy, justly as this quality has been extolled in that sacred office, possesses not a greater measure of it, than is commonly to be found in an English Act of Parliament. Dignity, simplicity, brevity, precision, intelligibility, possibility of being retained or so much as apprehended, every thing yields to Harmony. Volumes might be filled, shelves loaded, with the sacrifices that are made to this insatiate power. Expletives, her ministers in Grecian poetry are not less busy, though in different shape and bulk, in English legislation: in the former, they are monosyllables [*men, toi, ge, nun*, &c.]: in the latter, they are whole lines [And be it further enacted by the

authority aforesaid, that—Provided always, and it is hereby further enacted and declared that—&c. &c.].

To return to the *principle of sympathy and antipathy*: a term preferred at first, on account of its impartiality, to the *principle of caprice*. The choice of an appellative, in the above respects too narrow, was owing to my not having, at that time, extended my views over the civil branch of law, any otherwise than as I had found it inseparably involved in the penal. But when we come to the former branch, we shall see the *phantastic* principle making at least as great a figure there, as the principle of *sympathy and antipathy* in the latter.

In the days of Lord Coke, the light of utility can scarcely be said to have as yet shone upon the face of Common Law. If a faint ray of it, under the name of the *argumentum ab inconvenienti*, is to be found in a list of about twenty topics exhibited by that great lawyer as the co-ordinate leaders of that all-perfect system, the admission, so circumstanced, is as sure a proof of neglect, as, to the statues of Brutus and Cassius, exclusion was a cause of notice. It stands, neither in the front, nor in the rear, nor in any post of honour; but huddled in towards the middle, without the smallest mark of preference. [Coke, Littleton, 11. a.] Nor is this Latin *inconvenience* by any means the same thing with the English one. It stands distinguished from *mischief*: and because by the vulgar it is taken for something less bad, it is given by the learned as something worse. *The law prefers a mischief to an inconvenience*, says an admired maxim, and the more admired, because as nothing is expressed by it, the more is supposed to be understood.

Not that there is any avowed, much less a constant opposition, between the prescriptions of utility and the operations of the common law: such constancy we have seen to be too much even for ascetic fervor. [Supra, par. x] From time to time instinct would unavoidably betray them into the paths of reason: instinct which, however it may be cramped, can never be killed by education. The cobwebs spun out of the materials brought together by 'the competition of op-

posite analogies,' can never have ceased being warped by the silent attraction of the rational principle: though it should have been, as the needle is by the magnet, without the privity of conscience.

† Additional Note by the Author, July 1822.

Add, and that the bad system, of Mahometan and other native law was to be put down at all events, to make way for the inapplicable and still more mischievous system of English Judge-made law, and, by the hand of his accomplice Hastings, was to be put into the pocket of Impey—Importer of this instrument of subversion, £8,000 a-year contrary to law, in addition to the £8,000 a-year lavished upon him, with the customary profusion, by the hand of law.—See the Account of this transaction in *Mill's British India.*

To this Governor a statue is erecting by a vote of East India Directors and Proprietors: on it should be inscribed—*Let it but put money into our pockets, no tyranny too flagitious to be worshipped by us.*

To this statue of the Arch-malefactor should be added, for a companion, that of the long-robed accomplice: the one lodging the bribe in the hand of the other. The hundred millions of plundered and oppressed Hindoos and Mahometans pay for the one: a Westminster Hall subscription might pay for the other.

What they have done for Ireland with her seven millions of souls, the authorised deniers and perverters of justice have done for Hindostan with her hundred millions. In this there is nothing wonderful. The wonder is—that, under such institutions, men, though in ever such small number, should be found, whom the view of the injustices which, by *English Judge-made law*, they are compelled to commit, and the miseries they are thus compelled to produce, deprive of health and rest. Witness the Letter of an English Hindostan Judge, Sept. 1, 1819, which lies before me. I will not make so cruel a requital for

his honesty, as to put his name in print: indeed the House of Commons' Documents already published leave little need of it.

[1] *Various phrases that have served as the characteristic marks of so many pretended systems.* It is curious enough to observe the variety of inventions men have hit upon, and the variety of phrases they have brought forward, in order to conceal from the world, and, if possible, from themselves, this very general and therefore very pardonable self-sufficiency.

1. *Moral Sense.* One man says, he has a thing made on purpose to tell him what is right and what is wrong; and that it is called a *moral sense:* and then he goes to work at his ease, and says, such a thing is right, and such a thing is wrong—why? 'because my moral sense tells me it is.'

2. *Common Sense.* Another man comes and alters the phrase: leaving out *moral,* and putting in *common,* in the room of it. He then tells you, that his common sense teaches him what is right and wrong, as surely as the other's moral sense did: meaning by common sense, a sense of some kind or other, which, he says, is possessed by all mankind: the sense of those, whose sense is not the same as the author's, being struck out of the account as not worth taking. This contrivance does better than the other; for a moral sense, being a new thing, a man may feel about him a good while without being able to find it out: but common sense is as old as the creation; and there is no man but would be ashamed to be thought not to have as much of it as his neighbours. It has another great advantage: by appearing to share power, it lessens envy: for when a man gets up upon this ground, in order to anathematize those who differ from him, it is not by a *sic volo sic jubeo,* but by a *velitis jubeatis.*

3. *Understanding.* Another man comes, and says, that as to a moral sense indeed, he cannot find that he has any such thing: that however he has an *understanding,* which will do quite as well. This understanding, he says, is the standard of right and wrong: it tells him so and so. All good and wise men understand as he does: if other men's understandings differ in any point from his, so much the worse for them: it is a sure sign they are either defective or corrupt.

4. *Rule of Right.* Another man says, that there is an eternal and immutable Rule of Right: that that rule of right dictates so and so: and then he begins giving you his sentiments upon any thing that comes uppermost: and these sentiments (you are to take for granted) are so many branches of the eternal rule of right.

5. *Fitness of Things.* Another man, or perhaps the same man (it's no matter) says, that there are certain practices conformable, and others repugnant, to the Fitness of Things; and then he tells you, at his leisure, what practices are conformable and what repugnant: just as he happens to like a practice or dislike it.

6. *Law of Nature.* A great multitude of people are continually talking of the Law of Nature; and then they go on giving you their sentiments about what is right and what is wrong: and these sentiments, you are to understand, are so many chapters and sections of the Law of Nature.

7. *Law of Reason, Right Reason, Natural Justice, Natural Equity, Good Order.* Instead of the phrase, Law of Nature, you have sometimes, Law of Reason, Right Reason, Natural Justice, Natural Equity, Good Order. Any of them will do equally well. This latter is most used in politics. The three last are much more tolerable than the others, because they do not very explicitly claim to be any thing more than phrases: they insist but feebly upon the being looked upon as so many positive standards of themselves, and seem content to be taken, upon occasion, for phrases expressive of the conformity of the thing in question to the proper standard, whatever that may be. On most occasions, however, it will be better to say *utility: utility* is clearer, as referring more explicitly to pain and pleasure.

8. *Truth.* We have one philosopher, who says, there is no harm in any thing in the world but in telling a lie: and that if, for example, you were to murder your own father, this would only be a particular way of saying, he was not your father. Of course, when this philosopher sees any thing that he does not like, he says, it is a particular way of telling a lie. It is saying, that the act ought to be done, or may be done, when, *in truth,* it ought not to be done.

9. *Doctrine of Election.* The fairest and openest of them all is that sort of man who speaks out, and says, I am of the number of the Elect: now God himself takes care to inform the Elect what is right: and that with so good effect, and let them strive ever so, they cannot help not only knowing it but practising it. If therefore a man wants to know what is right and what is wrong, he has nothing to do but to come to me.

Repugnancy to Nature. It is upon the principle of antipathy that such and such acts are often reprobated on the score of their being *unnatural*: the practice of exposing children, established among the Greeks and Romans, was an unnatural practice. Unnatural, when it means any thing, means unfrequent: and there it means something; although nothing to the present purpose. But here it means no such thing: for the frequency of such acts is perhaps the great complaint. It therefore means nothing; nothing, I mean, which there is in the act itself. All it can serve to express is, the disposition of the person who is talking of it: the disposition he is in to be angry at the thoughts of it. Does it merit his anger? Very likely it may: but whether it does or no is a question, which, to be answered rightly, can only be answered upon the principle of utility.

Unnatural, is as good a word as moral sense, or common sense; and would be as good a foundation for a system. Such an act is unnatural; that is, repugnant to nature: for I do not like to practise it: and, consequently, do not practise it. It is therefore repugnant to what ought to be the nature of every body else.

Mischief they produce. The mischief common to all these ways of thinking and arguing (which, in truth, as we have seen, are but one and the same method, couched in different forms of words) is their serving as a cloke, and pretence, and aliment, to despotism: if not a despotism in practice, a despotism however in disposition: which is but too apt, when pretence and power offer, to show itself in practice. The consequence is, that with intentions very commonly of the purest kind, a man becomes a torment either to himself or his fellow-creatures. If he be of the melancholy cast, he sits in silent grief, bewailing their blindness and

depravity: if of the irascible, he declaims with fury and virulence against all who differ from him; blowing up the coals of fanaticism, and branding with the charge of corruption and insincerity, every man who does not think, or profess to think, as he does.

If such a man happens to possess the advantages of style, his book may do a considerable deal of mischief before the nothingness of it is understood.

These principles, if such they can be called, it is more frequent to see applied to morals than to politics: but their influence extends itself to both. In politics, as well as morals, a man will be at least equally glad of a pretence for deciding any question in the manner that best pleases him, without the trouble of inquiry. If a man is an infallible judge of what is right and wrong in the actions of private individuals, why not in the measures to be observed by public men in the direction of those actions? accordingly (not to mention other chimeras) I have more than once known the pretended law of nature set up in legislative debates, in opposition to arguments derived from the principle of utility.

Whether utility is actually the sole ground of all the approbation we ever bestow, is a different consideration. 'But is it never, then, from any other considerations than those of utility, that we derive our notions of right and wrong?' I do not know: I do not care. Whether a moral sentiment can be originally conceived from any other source than a view of utility, is one question: whether upon examination and reflection it can, in point of fact, be actually persisted in and justified on any other ground, by a person reflecting within himself, is another: whether in point of right it can properly be justified on any other ground, by a person addressing himself to the community, is a third. The two first are questions of speculation: it matters not, comparatively speaking, how they are decided. The last is a question of practice: the decision of it is of as much importance as that of any can be.

'I feel in myself,' (say you) 'a disposition to approve of such or such an action in a moral view: but this is not owing to any notions I have of its being a useful one to

the community. I do not pretend to know whether it be an useful one or not: it may be, for aught I know, a mischievous one.' 'But is it then,' (say I) 'a mischievous one? examine; and if you can make yourself sensible that it is so, then, if duty means any thing, that is, moral duty, it is your *duty* at least to abstain from it: and more than that, if it is what lies in your power, and can be done without too great a sacrifice, to endeavour to prevent it. It is not your cherishing the notion of it in your bosom, and giving it the name of virtue, that will excuse you.'

'I feel in myself,' (say you again) 'a disposition to detest such or such an action in a moral view; but this is not owing to any notions I have of its being a mischievous one to the community. I do not pretend to know whether it be a mischievous one or not: it may be not a mischievous one: it may be, for aught I know, an useful one.'—'May it indeed,' (say I) 'an useful one? but let me tell you then, that unless duty, and right and wrong, be just what you please to make them, if it really be not a mischievous one, and any body has a mind to do it, it is no duty of yours, but, on the contrary, it would be very wrong in you, to take upon you to prevent him: detest it within yourself as much as you please; that may be a very good reason (unless it be also a useful one) for your not doing it yourself: but if you go about, by word or deed, to do any thing to hinder him, or make him suffer for it, it is you, and not he, that have done wrong: it is not your setting yourself to blame his conduct, or branding it with the name of vice, that will make him culpable, or you blameless. Therefore, if you can make yourself content that he shall be of one mind, and you of another, about that matter, and so continue, it is well: but if nothing will serve you, but that you and he must needs be of the same mind, I'll tell you what you have to do: it is for you to get the better of your antipathy, not for him to truckle to it.'

[8] King James the First of England had conceived a violent antipathy against Arians: two of whom he burnt [Hume's Hist. vol. 6.]. This gratification he procured himself without much difficulty: the notions of the times were favourable to it. He wrote a furious book against Vorstius, for being

what was called an Arminian: for Vorstius was at a distance. He also wrote a furious book, called 'A Counterblast to Tobacco,' against the use of that drug, which Sir Walter Raleigh had then lately introduced. Had the notions of the times co-operated with him, he would have burnt the Anabaptist and the smoker of tobacco in the same fire. However he had the satisfaction of putting Raleigh to death afterwards, though for another crime.

Disputes concerning the comparative excellence of French and Italian music have occasioned very serious bickerings at Paris. One of the parties would not have been sorry (says Mr. D'Alembert [Melanges Essai sur la Liberté de la Musique.]) to have brought government into the quarrel. Pretences were sought after and urged. Long before that, a dispute of like nature, and of at least equal warmth, had been kindled at London upon the comparative merits of two composers at London; where riots between the approvers and disapprovers of a new play are, at this day, not unfrequent. The ground of quarrel between the Big-endians and the Little-endians in the fable, was not more frivolous than many an one which has laid empires desolate. In Russia, it is said, there was a time when some thousands of persons lost their lives in a quarrel, in which the government had taken part, about the number of fingers to be used in making the sign of the cross. This was in days of yore: the ministers of Catherine II. are better *instructed* [Instruct. art. 474, 475, 476.] than to take any other part in such disputes, than that of preventing the parties concerned from doing one another a mischief.

[9] See ch. xvi. [Division], par. 42, 44.

[10] *The principle of theology how reducible to one or another of the other three principles.* The principle of theology refers every thing to God's pleasure. But what is God's pleasure? God does not, he confessedly does not now, either speak or write to us. How then are we to know what is his pleasure? By observing what is our own pleasure, and pronouncing it to be his. Accordingly, what is called the pleasure of God, is and must necessarily be (revelation apart) neither more nor less than the good pleasure of the person, whoever

he be, who is pronouncing what he believes, or pretends, to be God's pleasure. How know you it to be God's pleasure that such or such an act should be abstained from? whence come you even to suppose as much? 'Because the engaging in it would, I imagine, be prejudicial upon the whole to the happiness of mankind;' says the partizan of the principle of utility: 'Because the commission of it is attended with a gross and sensual, or at least with a trifling and transient satisfaction;' says the partizan of the principle of asceticism: 'Because I detest the thoughts of it; and I cannot, neither ought I to be called upon to tell why;' says he who proceeds upon the principle of antipathy. In the words of one or other of these must that person necessarily answer (revelation apart) who professes to take for his standard the will of God.

CHAPTER III.

[11] Sanctio, in Latin, was used to signify the *act of binding*, and, by a common grammatical transition, *any thing which serves to bind a man:* to wit, to the observance of such or such a mode of conduct. According to a Latin grammarian [Servius. See Ainsworth's Dict. ad verbum *Sanctio*.], the import of the word is derived by rather a far-fetched process (such as those commonly are, and in a great measure indeed must be, by which intellectual ideas are derived from sensible ones) from the word *sanguis*, blood: because, among the Romans, with a view to inculcate into the people a persuasion that such or such a mode of conduct would be rendered obligatory upon a man by the force of what I call the religious sanction (that is, that he would be made to suffer by the extraordinary interposition of some superior being, if he failed to observe the mode of conduct in question) certain ceremonies were contrived by the priests: in the course of which ceremonies the blood of victims was made use of.

A Sanction then is a source of obligatory powers or *motives:* that is, of *pains* and *pleasures;* which, according as they are connected with such or such modes of conduct, operate, and are indeed the only things which can operate, as *motives*. See Chap. x [Motives].

[12] Better termed *popular*, as more directly indicative of its constituent cause; as likewise of its relation to the more common phrase *public opinion*, in French *opinion publique*, the name there given to that tutelary power, of which of late so much is said, and by which so much is done. The latter appellation is however unhappy and inexpressive; since if *opinion* is material, it is only in virtue of the influence it exercises over action, through the medium of the affections and the will.

[13] A suffering conceived to befall a man by the immediate act of God, as above, is often, for shortness' sake, called a *judgment:* instead of saying, a suffering inflicted on him in consequence of a special judgment formed, and resolution thereupon taken, by the Deity.

[14] See ch. xiii. [Cases unmeet] par. 2. note.

CHAPTER IV.

[15] These circumstances have since been denominated *elements* or *dimensions* of *value* in a pleasure or a pain.

Not long after the publication of the first edition, the following memoriter verses were framed, in the view of lodging more effectually, in the memory, these points, on which the whole fabric of morals and legislation may be seen to rest.

Intense, long, certain, speedy, fruitful, pure—
Such marks in *pleasures* and in *pains* endure.
Such pleasures seek if *private* be thy end:
If it be *public*, wide let them *extend*.
Such *pains* avoid, whichever be thy view:
If pains *must* come, let them *extend* to few.

CHAPTER V.

[16] *Analytical view, why none given.* The catalogue here given, is what seemed to be a complete list of the several simple pleasures and pains of which human nature is susceptible: insomuch, that if, upon any occasion whatsoever, a man feels pleasure or pain, it is either referable at once to some one or other of these kinds, or resolvable into such as are. It might perhaps have been a satisfaction to the reader,

to have seen an analytical view of the subject, taken upon an exhaustive plan, for the purpose of demonstrating the catalogue to be what it purports to be, a complete one. The catalogue is in fact the result of such an analysis; which, however, I thought it better to discard at present, as being of too metaphysical a cast, and not strictly within the limits of this design. See ch. xiii. [Cases unmeet], par. 2. Note.

[17] There are also pleasures of novelty, excited by the appearance of new ideas: these are pleasures of the imagination. See infra xiii.

[18] For instance, the pleasure of being able to gratify the sense of hearing, by singing, or performing upon any musical instrument. The pleasure thus obtained, is a thing superadded to, and perfectly distinguishable from, that which a man enjoys from hearing another person perform in the same manner.

[19] See ch. iii. [Sanctions].

[20] See ch. iii. [Sanctions].

[21] In contradistinction to these, all other pleasures may be termed pleasures of *enjoyment*.

[22] *No positive pains correspond to the pleasure of the sexual sense.* The pleasure of the sexual sense seems to have no positive pain to correspond to it: it has only a pain of privation, or pain of the mental class, the pain of unsatisfied desire. If any positive pain of body result from the want of such indulgence, it belongs to the head of pains of disease.

[23] *No positive pains correspond to the pleasure of novelty.* The pleasures of novelty have no positive pains corresponding to them. The pain which a man experiences when he is in the condition of not knowing what to do with himself, that pain, which in French is expressed by a single word *ennui*, is a pain of privation: a pain resulting from the absence, not only of all the pleasures of novelty, but of all kinds of pleasure whatsoever.

—nor to those of wealth. The pleasures of wealth have also no positive pains corresponding to them: the only pains opposed to them are pains of privation. If any positive pains result from the want of wealth, they are referable to some other class of positive pains; principally to those of the

senses. From the want of food, for instance, result the pains of hunger; from the want of clothing, the pains of cold; and so forth.

[24] *Is this a distinct positive pain or only a pain of privation?* It may be a question, perhaps, whether this be a positive pain of itself, or whether it be nothing more than a pain of privation, resulting from the consciousness of a want of skill. It is, however, but a question of words, nor does it matter which way it be determined.

[25] *The positive pains of an ill-name, and the pains of privation, opposed to the pleasures of a good name, run into one another.* In as far as a man's fellow-creatures are supposed to be determined by any event not to regard him with any degree of esteem or *good* will, or to regard him with a less degree of esteem or *good* will than they would otherwise; not to do him any sorts of *good* offices, or not to do him so many *good* offices as they would otherwise; the pain resulting from such consideration may be reckoned a pain of privation: as far as they are supposed to regard him with such a degree of aversion or disesteem as to be disposed to do him positive *ill* offices, it may be reckoned a positive pain. The pain of privation, and the positive pain, in this case run one into another indistinguishably.

[26] *No positive pains correspond to the pleasures of power.* There seem to be no positive pains to correspond to the pleasures of power. The pains that a man may feel from the want or the loss of power, in as far as power is distinguished from all other sources of pleasure, seem to be nothing more than pains of privation.

[27] *The positive pains of piety, and the pains of privation, opposed to the pleasures of piety, run into one another.* The positive pains of piety, and the pains of privation, opposed to the pleasures of piety, run one into another in the same manner as the positive pains of enmity, or of an ill name, do with respect to the pains of privation, opposed to the pleasures of amity, and those of a good name. If what is apprehended at the hands of God is barely the not receiving pleasure, the pain is of the privative class: if, moreover, actual pain be apprehended, it is of the class of positive pains.

[28] In contradistinction to these, all other pains may be termed pains of *sufferance*.

[29] See chap. x. [Motives].

[30] *Pleasures and pains of amity and enmity distinguished from those of benevolence and malevolence.* By this means the pleasures and pains of amity may be the more clearly distinguished from those of benevolence: and on the other hand, those of enmity from those of malevolence. The pleasures and pains of amity and enmity are of the self-regarding cast: those of benevolence and malevolence of the extra-regarding.

[31] *Complex pleasures and pains omitted, why.* It would be a matter not only of curiosity, but of some use, to exhibit a catalogue of the several complex pleasures and pains, analyzing them at the same time into the several simple ones, of which they are respectively composed. But such a disquisition would take up too much room to be admitted here. A short specimen, however, for the purpose of illustration, can hardly be dispensed with.

Specimen. Pleasures of a country prospect. The pleasures taken in at the eye and ear are generally very complex. The pleasures of a country scene, for instance, consist commonly, amongst others, of the following pleasures:

I. Pleasures of the senses.

1. The simple pleasures of sight, excited by the perception of agreeable colours and figures, green fields, waving foliage, glistening water, and the like.

2. The simple pleasures of the ear, excited by the perceptions of the chirping of birds, the murmuring of waters, the rustling of the wind among the trees.

3. The pleasures of the smell, excited by the perceptions of the fragrance of flowers, of new-mown hay, or other vegetable substances, in the first stages of fermentation.

4. The agreeable inward sensation, produced by a brisk circulation of the blood, and the ventilation of it in the lungs by a pure air, such as that in the country frequently is in comparison of that which is breathed in towns.

II. Pleasures of the imagination produced by association.

1. The idea of the plenty, resulting from the possession of the objects that are in view, and of the happiness arising from it.

2. The idea of the innocence and happiness of the birds, sheep, cattle, dogs, and other gentle or domestic animals.

3. The idea of the constant flow of health, supposed to be enjoyed by all these creatures: a notion which is apt to result from the occasional flow of health enjoyed by the supposed spectator.

4. The idea of gratitude, excited by the contemplation of the all-powerful and beneficent Being, who is looked up to as the author of these blessings.

These four last are all of them, in some measure at least, pleasures of sympathy.

The depriving a man of this group of pleasures is one of the evils apt to result from imprisonment; whether produced by illegal violence, or in the way of punishment, by appointment of the laws.

CHAPTER VI.

[82] The exciting cause, the pleasure or pain produced by it, and the intention produced by such pleasure or pain in the character of a motive, are objects so intimately connected, that, in what follows, I fear I have not, on every occasion, been able to keep them sufficiently distinct. I thought it necessary to give the reader this warning; after which, should there be found any such mistakes, it is to be hoped they will not be productive of much confusion.

[83] Thus, in physical bodies, the momentum of a ball put in motion by impulse, will be influenced by the circumstance of gravity: being in some directions increased, in others diminished by it. So in a ship, put in motion by the wind, the momentum and direction will be influenced not only by the attraction of gravity, but by the motion and resistance of the water, and several other circumstances.

[84] *Extent and intricacy of this subject.* An analytical view of all these circumstances will be given at the conclusion of the chapter: to which place it was necessary to refer it, as it

could not well have been understood, till some of them had been previously explained.

To search out the vast variety of exciting or moderating causes, by which the degree or bias of a man's sensibility may be influenced, to define the boundaries of each, to extricate them from the entanglements in which they are involved, to lay the effect of each article distinctly before the reader's eye, is, perhaps, if not absolutely the most difficult task, at least one of the most difficult tasks, within the compass of moral physiology. Disquisitions on this head can never be completely satisfactory without examples. To provide a sufficient collection of such examples, would be a work of great labour as well as nicety: history and biography would need to be ransacked: a vast course of reading would need to be travelled through on purpose. By such a process the present work would doubtless have been rendered more amusing; but in point of bulk, so enormous, that this single chapter would have been swelled into a considerable volume. Feigned cases, although they may upon occasion serve to render the general matter tolerably intelligible, can never be sufficient to render it palatable. On this therefore, as on so many other occasions, I must confine myself to dry and general instruction: discarding illustration, although sensible that without it instruction cannot manifest half its efficacy. The subject, however, is so difficult, and so new, that I shall think I have not ill succeeded, if, without pretending to exhaust it, I shall have been able to mark out the principal points of view, and to put the matter in such a method as may facilitate the researches of happier inquirers.

The great difficulty lies in the nature of the words; which are not, like pain and pleasure, names of homogeneous real entities, but names of various fictitious entities, for which no common genus is to be found: and which therefore, without a vast and roundabout chain of investigation, can never be brought under any exhaustive plan of arrangement, but must be picked up here and there as they happen to occur.

[85] It may be thought, that in a certain degree of health, this negative account of the matter hardly comes up to the case. In a certain degree of health, there is often such a

kind of feeling diffused over the whole frame, such a comfortable feel, or flow of spirits, as it is called, as may with propriety come under the head of positive pleasure. But without experiencing any such pleasurable feeling, if a man experience no painful one, he may be well enough said to be in health.

[86] *Measure of strength, the weight a man can lift.* The most accurate measure that can be given of a man's strength, seems to be that which is taken from the weight or number of pounds and ounces he can lift with his hands in a given attitude. This indeed relates immediately only to his arms: but these are the organs of strength which are most employed; of which the strength corresponds with most exactness to the general state of the body with regard to strength; and in which the quantum of strength is easiest measured. Strength may accordingly be distinguished into *general* and *particular*.

Weakness, what. Weakness is a negative term, and imports the absence of strength. It is, besides, a relative term, and accordingly imports the absence of such a quantity of strength as makes the share, possessed by the person in question, less than that of some person he is compared to. Weakness, when it is at such a degree as to make it painful for a man to perform the motions necessary to the going through the ordinary functions of life, such as to get up, to walk, to dress one's self, and so forth, brings the circumstance of health into question, and puts a man into that sort of condition in which he is said to be in ill health.

[87] See B. I. Tit. [Irrep. corp. Injuries].

[88] See chap. iv. [Value].

[89] When, for instance, having been determined, by the prospect of some inconvenience, not to disclose a fact, although he should be put to the rack, he perseveres in such resolution after the rack is brought into his presence, and even applied to him.

[40] The facility with which children grow tired of their play-things, and throw them away, is an instance of unsteadiness: the perseverance with which a merchant applies himself to his traffic, or an author to his book, may be taken

for an instance of the contrary. It is difficult to judge of the quantity of pleasure or pain in these cases, but from the effects which it produces in the character of a motive: and even then it is difficult to pronounce, whether the change of conduct happens by the extinction of the old pleasure or pain, or by the intervention of a new one.

[41] See ch. v. [Pleasures and Pains].

[42] See ch. v. [Pleasures and Pains].

[43] This is one reason why legislators in general like better to have married people to deal with than single; and people that have children than such as are childless. It is manifest that the stronger and more numerous a man's connexions in the way of sympathy are, the stronger is the hold which the law has upon him. A wife and children are so many pledges a man gives to the world for his good behaviour.

[44] *Idiosyncrasy, what.* The characteristic circumstances whereby one man's frame of body or mind, considered at any given period, stands distinguished from that of another, have been comprised by metaphysicians and physiologists under the name *idiosyncrasy*, from ιδιος, peculiar, and συνκρασις, composition.

[45] *Whether the soul be material* or *immaterial makes no difference.* Those who maintain, that the mind and the body are one substance, may here object, that upon that supposition the distinction between frame of mind and frame of body is but nominal, and that accordingly there is no such thing as a frame of mind distinct from the frame of body. But granting, for argument-sake, the antecedent, we may dispute the consequence. For if the mind be but a part of the body, it is at any rate of a nature very different from the other parts of the body.

A man's frame of body cannot in any part of it undergo any considerable alteration without its being immediately indicated by phænomena discernible by the senses. A man's frame of mind may undergo very considerable alterations, his frame of body remaining the same to all appearance; that is, for any thing that is indicated to the contrary by phænomena cognizable to the senses: meaning those of other men.

[46] Hume's Hist.

[47] The quantity of the sort of pain, which is called grief, is indeed hardly to be measured by any external indications. It is neither to be measured, for instance, by the quantity of the tears, nor by the number of moments spent in crying. Indications rather less equivocal may, perhaps, be afforded by the pulse. A man has not the motions of his heart at command as he has those of the muscles of his face. But the particular significancy of these indications is still very uncertain. All they can express is, that the man is affected; they cannot express in what manner, nor from what cause. To an affection resulting in reality from such or such a cause, he may give an artificial colouring, and attribute it to such or such another cause. To an affection directed in reality to such or such a person as its object, he may give an artificial bias, and represent it as if directed to such or such another object. Tears of rage he may attribute to contrition. The concern he feels at the thoughts of a punishment that awaits him, he may impute to a sympathetic concern for the mischief produced by his offence.

A very tolerable judgment, however, may commonly be formed by a discerning mind, upon laying all the external indications exhibited by a man together, and at the same time comparing them with his actions.

A remarkable instance of the power of the will, over the external indications of sensibility, is to be found in Tacitus's story of the Roman soldier, who raised a mutiny in the camp, pretending to have lost a brother by the lawless cruelty of the General. The truth was, he never had had a brother.

[48] The ways in which a religion may lessen a man's means, or augment his wants, are various. Sometimes it will prevent him from making a profit of his money: sometimes from setting his hand to labour. Sometimes it will oblige him to buy dearer food instead of cheaper: sometimes to purchase useless labour: sometimes to pay men for not labouring: sometimes to purchase trinkets, on which imagination alone has set a value: sometimes to purchase exemptions from punishment, or titles to felicity in the world to come.

[49] This is far from being a visionary proposal, not reducible

to practice. I speak from experience, having actually drawn up such an estimate, though upon the least commodious of the two plans, and before the several circumstances in question had been reduced to the precise number and order in which they are here enumerated. This is a part of the matter destined for another work. See ch. xiii. [Cases unmeet], par. 2. Note. There are some of these circumstances that bestow particular denominations on the persons they relate to: thus, from the circumstance of bodily imperfections, persons are denominated deaf, dumb, blind, and so forth: from the circumstance of insanity, idiots, and maniacs: from the circumstance of age, infants: for all which classes of persons particular provision is made in the Code. See B. I. tit. [Exemptions]. Persons thus distinguished will form so many articles in the *catalogus personarum privilegiatarum*. See Appendix. tit. [Composition].

[50] *Analytical view of the constituent articles in a man's pecuniary circumstances.* As to a man's pecuniary circumstances, the causes on which those circumstances depend, do not come all of them under the same class. The absolute quantum of a man's property does indeed come under the same class with his pecuniary circumstances in general: so does the profit he makes from the occupation which furnishes him with the means of livelihood. But the occupation itself concerns his own person, and comes under the same head as his habitual amusements: as likewise his habits of expense: his connexions in the ways of profit and of burthen, under the same head as his connexions in the way of sympathy: and the circumstances of his present demand for money, and strength of expectation, come under the head of those circumstances relative to his person which regard his affections.

CHAPTER VII.

[51] Or *of importance.*

[52] In certain cases the consequences of an act may be material by serving as evidences indicating the existence of some other material fact, which is even *antecedent* to the

act of which they are the consequences: but even here, they are material only because, in virtue of such their evidentiary quality, they have an influence, at a subsequent period of time, in the production of pain and pleasure: for example, by serving as grounds for conviction, and thence for punishment. See tit. [Simple Falsehoods], *verbo* [material].

[53] See B. I. tit. [Exemptions] and tit. [Extenuations].

[54] *Acts of omission are still acts.* The distinction between positive and negative acts runs through the whole system of offences, and sometimes makes a material difference with regard to their consequences. To reconcile us the better to the extensive, and, as it may appear on some occasions, the inconsistent signification here given to the word *act*, it may be considered, 1. That in many cases, where no exterior or overt act is exercised, the state which the mind is in at the time when the supposed act is said to happen, is as truly and directly the result of the will, as any exterior act, how plain and conspicuous soever. The not revealing a conspiracy, for instance, may be as perfectly the act of the will, as the joining in it. In the next place, that even though the mind should never have had the incident in question in contemplation (insomuch that the event of its not happening should not have been so much as obliquely intentional) still the state the person's mind was in at the time when, if he *had* so willed, the incident might have happened, is in many cases productive of as material consequences; and not only as likely, but as fit to call for the interposition of other agents, as the opposite one. Thus, when a tax is imposed, your not paying it is an act which at any rate must be punished in a certain manner, whether you happen to think of paying it or not.

[55] An exterior act is also called by lawyers *overt*.

[56] *Distinction between transitive acts and intransitive, recognized by grammarians.* The distinction is well known to the latter grammarians: it is with them indeed that it took its rise: though by them it has been applied rather to the names than to the things themselves. To verbs, signifying transitive acts, as here described, they have given the name of transitive verbs: those significative of intransitive acts they

have termed intransitive. These last are still more frequently called *neuter*; that is, *neither* active nor passive. The appellation seems improper: since, instead of their being *neither*, they are both in one.

To the class of acts that are here termed intransitive, belong those which constitute the 3rd class in the system of offences. See ch. [Division] and B. I. tit. [Self regarding Offences].

[57] Or *in its migration*, or *in transitu*.

[58] These distinctions will be referred to in the next chapter: ch. viii. [Intentionality]: and applied to practice in B. I. tit. [Extenuations].

[59] A habit, it should seem, can hardly in strictness be termed an aggregate of acts: acts being a sort of real archetypal entities, and habits a kind of fictitious entities or imaginary beings, supposed to be constituted by, or to result as it were out of, the former.

[60] Distinctions like these come frequently in question in the course of Procedure.

[61] Or entities. See. B. II. tit. [Evidence], § [Facts].

[62] Circumstance *archetypation of the word*. The etymology of the word circumstance is perfectly characteristic of its import: *circum stantia*, things standing round: objects standing round a given object. I forget what mathematician it was that defined God to be a circle, of which the centre is every where, but the circumference no where. In like manner the field of circumstances, belonging to any act, may be defined a circle, of which the circumference is no where, but of which the act in question is the centre. Now then, as any act may, for the purpose of discourse, be considered as a centre, any other act or object whatsoever may be considered as of the number of those that are standing round it.

[63] See B. II. tit. [Evidence], § [Facts].

[64] The division may be farther illustrated and confirmed by the more simple and particular case of animal generation. To production corresponds paternity: to derivation, filiation: to collateral connexion, collateral consanguinity: to conjunct influence, marriage and copulation.

If necessary, it might be again illustrated by the material

image of a chain, such as that which, according to the ingenious fiction of the ancients, is attached to the throne of Jupiter. A section of this chain should then be exhibited by way of specimen, in the manner of the *diagram* of a pedigree. Such a figure I should accordingly have exhibited, had it not been for the apprehension that an exhibition of this sort, while it made the subject a small matter clearer to one man out of a hundred, might, like the mathematical formularies we see sometimes employed for the like purpose, make it more obscure and formidable for the other ninety-nine.

[65] The more remote a connexion of this sort is, of course the more obscure. It will often happen that a connexion, the idea of which would at first sight appear extravagant and absurd, shall be rendered highly probable, and indeed indisputable, merely by the suggestion of a few intermediate circumstances.

At Rome, 390 years before the Christian æra, a goose sets up a cackling: two thousand years afterwards a king of France is murdered. To consider these two events, and nothing more, what can appear more extravagant than the notion that the former of them should have had any influence on the production of the latter? Fill up the gap, bring to mind a few intermediate circumstances, and nothing can appear more probable. It was the cackling of a parcel of geese, at the time the Gauls had surprised the Capitol, that saved the Roman commonwealth: had it not been for the ascendancy that commonwealth acquired afterwards over most of the nations of Europe, amongst others over France, the Christian religion, humanly speaking, could not have established itself in the manner it did in that country. Grant then, that such a man as Henry IV. would have existed, no man, however, would have had those motives, by which Ravaillac, misled by a mischievous notion concerning the dictates of that religion, was prompted to assassinate him.

[66] See B. I. tit. [Crim. circumstances].

[67] See B. I. tit. [Justifications].

[68] See B. I. tit. [Extenuations].

[69] See B. I. tit. [Aggravations].

[70] See B. I. tit. [Accessory Offences] and B. II. tit. [Evidence].

It is evident that this analysis is equally applicable to incidents of a purely physical nature, as to those in which moral agency is concerned. If therefore it be just and useful here, it might be found not impossible, perhaps, to find some use for it in natural philosophy.

CHAPTER VIII.

[71] *Ambiguity of the words* voluntary *and* involuntary. On this occasion the words *voluntary* and *involuntary* are commonly employed. These, however, I purposely abstain from, on account of the extreme ambiguity of their signification. By a voluntary act is meant sometimes, any act, in the performance of which the will has had any concern at all; in this sense it is synonymous to *intentional*: sometimes such acts only, in the production of which the will has been determined by motives not of a painful nature; in this sense it is synonymous to unconstrained, or *uncoerced*: sometimes such acts only, in the production of which the will has been determined by motives, which, whether of the pleasurable or painful kind, occurred to a man himself, without being suggested by any body else; in this sense it is synonymous to *spontaneous*. The sense of the word involuntary does not correspond completely to that of the word voluntary. Involuntary is used in opposition to intentional; and to unconstrained: but not to spontaneous. It might be of use to confine the signification of the words voluntary and involuntary to one single and very narrow case, which will be mentioned in the next note.

[72] *An act unintentional in its first stage, may be so with respect to, 1. Quantity of matter moved; 2. Direction; 3. Velocity.* To render the analysis here given of the possible states of the mind in point of intentionality absolutely complete, it must be pushed to such a farther degree of minuteness, as to some eyes will be apt to appear trifling. On this account it seemed advisable to discard what follows, from the text to a place where any one who thinks proper may pass by it. An act of the body, when of the positive kind, is a motion: now in motion there are always three articles to be considered: 1. The quantity of matter that moves: 2. The direction in which it moves: and, 3. The velocity with which

it moves. Correspondent to these three articles, are so many modes of intentionality, with regard to an act, considered as being only in its first stage. To be completely unintentional, it must be unintentional with respect to every one of these three particulars. This is the case with those acts which alone are properly termed *involuntary*: acts, in the performance of which the will has no sort of share: such as the contractions of the heart and arteries.

Upon this principle, acts that are unintentional in their first stage, may be distinguished into such as are completely unintentional, and such as are incompletely unintentional: and these again may be unintentional, either in point of quantity of matter alone, in point of direction alone, in point of velocity alone, or in any two of these points together.

The example given further on may easily be extended to this part of the analysis, by any one who thinks it worth the while.

There seem to be occasions in which even these disquisitions, minute as they may appear, may not be without their use in practice. In the case of homicide, for example, and other corporal injuries, all the distinctions here specified may occur, and in the course of trial may, for some purpose or other, require to be brought to mind, and made the subject of discourse. What may contribute to render the mention of them pardonable, is the use that might possibly be made of them in natural philosophy. In the hands of an expert metaphysician, these, together with the foregoing chapter on human actions, and the section on facts in general, in title Evidence of the Book of Procedure, might, perhaps, be made to contribute something towards an exhaustive analysis of the possible varieties of mechanical inventions.

[78] Or concurrently.

[74] *Difference between an incident's being unintentional and disjunctively intentional, when the election is in favour of the other.* There is a difference between the case when an incident is altogether unintentional, and that in which it being disjunctively intentional with reference to another the preference is in favour of that other. In the first case it is not the intention of the party that the incident in

question should happen at all: in the latter case, the intention is rather that the other should happen: but if that cannot be, then that this in question should happen rather than that neither should, and that both, at any rate, should not happen.

All these are distinctions to be attended to in the use of the particle *or:* a particle of very ambiguous import, and of great importance in legislation. See Append. tit. [Composition].

[75] Hume's Hist.

[76] See ch. vii. [Actions], par. 14.

CHAPTER IX.

[77] See ch. vii. [Actions], par. 3.

[78] See ch. vi. [Sensibility], par. 12.

[79] See B. I. tit. [Extenuations].

[80] See ch. xii. [Consequences].

[81] See B. I. tit. [Theft] *verbo* [amenable].

[82] Dolus, an virtus quis in hoste requirit?—VIRGIL.
——*dolō ēe kai amphadon.*—HOMER.

[83] I pretend not here to give any determinate explanation of a set of words, of which the great misfortune is, that the import of them is confused and indeterminate. I speak only by approximation. To attempt to determine the precise import that has been given them by a hundredth part of the authors that have used them, would be an endless task. Would any one talk intelligibly on this subject in Latin? let him throw out *dolus* altogether: let him keep *culpa*, for the purpose of expressing not the case itself, but the sentiment that is entertained concerning a case described by other means. For intentionality, let him coin a word boldly, and say *intentionalitas:* for unintentionality, *non-intentionalitas*. For unadvisedness, he has already the word *inscitia;* though the words *imprudentia, inobservantia*, were it not for the other senses they are used in, would do better: for unadvisedness coupled with heedlessness, let him say *inscitia culpabilis:* for unadvisedness without heedlessness, *inscitia inculpabilis:* for mis-advisedness coupled with rashness, *error culpabilis, error*

temerarius, or *error cum temeritate*: for mis-advisedness without rashness, *error inculpabilis*, *error non-temerarius*, or *error sine temeritate*.

It is not unfrequent likewise to meet with the phrase, *malo animo*: a phrase still more indeterminate, if possible, than any of the former. It seems to have reference either to intentionality, or to consciousness, or to the motive, or to the disposition, or to any two or more of these taken together; nobody can tell which: these being objects which seem to have never hitherto been properly distinguished and defined.

[84] See ch. xiii. [Cases unmeet].

[85] See B. I. tit. [Circumstances influencing].

[86] See B. I. tit. [Aggravations].

[87] See B. I. tit. [Extenuations].

CHAPTER X.

[88] Note by the author, July, 1822.

For a tabular simultaneous view of the whole list of MOTIVES, in conjunction with the correspondent *pleasures* and *pains*, *interests* and *desires*, see, by the same author, *Table of the Springs of Action*, &c., with Explanatory Notes and Observations. London: 1817, Hunter, St. Paul's Church Yard, 8vo. pp. 32.

The word *inducement* has of late presented itself, as being in its signification more comprehensive than the word *motive*, and on some occasions more apposite.

[89] When the effect or tendency of a motive is to determine a man to forbear to act, it may seem improper to make use of the term *motive*: since motive, properly speaking, means that which disposes an object to *move*. We must however use that improper term, or a term which, though proper enough, is scarce in use, the word *determinative*. By way of justification, or at least apology, for the popular usage in this behalf, it may be observed, that even forbearance to act, or the negation of motion (that is, of bodily motion) supposes an act done, when such forbearance is voluntary. It supposes, to wit, an act of the will, which is as much a positive act, as much a motion, as any other act of the thinking substance.

[90] Whether it be the expectation of being burnt, or the pain that accompanies that expectation, that is the immediate internal motive spoken of, may be difficult to determine. It may even be questioned, perhaps, whether they are distinct entities. Both questions, however, seem to be mere questions of words, and the solution of them altogether immaterial. Even the other kinds of motives, though for some purposes they demand a separate consideration, are, however, so intimately allied, that it will often be scarce practicable, and not always material, to avoid confounding them, as they have always hitherto been confounded.

[91] Under the term *esse* must be included as well *past* existence, with reference to a given period, as *present*. They are equally real, in comparison with what is as yet but future. Language is materially deficient, in not enabling us to distinguish with precision between *existence* as opposed to *unreality* and *present* existence as opposed to past. The word existence in English, and *esse*, adopted by lawyers from the Latin, have the inconvenience of appearing to confine the existence in question to some single period considered as being present.

[92] Let a man's motive be ill-will; call it even malice, envy, cruelty; it is still a kind of pleasure that is his motive: the pleasure he takes at the thought of the pain which he sees, or expects to see, his adversary undergo. Now even this wretched pleasure, taken by itself, is good: it may be faint; it may be short: it must at any rate be impure: yet while it lasts, and before any bad consequences arrive, it is as good as any other that is not more intense. See ch. iv. [Value].

[93] For the reason, see chap. xi. [Dispositions], par. xvii. note.

[94] To this imperfection of language, and nothing more, are to be attributed, in great measure, the violent clamours that have from time to time been raised against those ingenious moralists, who, travelling out of the beaten tract of speculation, have found more or less difficulty in disentangling themselves from the shackles of ordinary language: such as Rochefoucault, Mandeville and Helvetius. To the unsoundness of their opinions, and, with still greater in-

justice, to the corruption of their hearts, was often imputed, what was most commonly owing either to a want of skill, in matters of language on the part of the author, or a want of discernment, possibly now and then in some instances a want of probity, on the part of the commentator.

[95] Happily, language is not always so intractable, but that by making use of two words instead of one, a man may avoid the inconvenience of fabricating words that are absolutely new. Thus instead of the word lust, by putting together two words in common use, he may frame the neutral expression, sexual desire: instead of the word avarice, by putting together two other words also in common use, he may frame the neutral expression, pecuniary interest. This, accordingly, is the course which I have taken. In these instances, indeed, even the combination is not novel: the only novelty there is consists in the steady adherence to the one neutral expression, rejecting altogether the terms, of which the import is infected by adventitious and unsuitable ideas.

In the catalogue of motives, corresponding to the several sorts of pains and pleasures, I have inserted such as have occurred to me. I cannot pretend to warrant it complete. To make sure of rendering it so, the only way would be, to turn over the dictionary from beginning to end: an operation which, in a view to perfection, would be necessary for more purposes than this. See B. I. tit. [Defamation], and Append. tit. [Composition].

[96] Hunger and thirst, considered in the light of motives, import not so much the desire of a particular kind of pleasure, as the desire of removing a positive kind of pain. They do not extend to the desire of that kind of pleasure which depends on the choice of foods and liquors.

[97] It will not be worth while, in every case, to give an instance in which the action may be indifferent: if good as well as bad actions may result from the same motive, it is easy to conceive, that also may be indifferent.

[98] Love indeed includes sometimes this idea: but then it can never answer the purpose of exhibiting it separately: since there are three motives, at least, that may all of them

be included in it, besides this: the love of beauty corresponding to the pleasures of the eye, and the motives corresponding to those of amity and benevolence. We speak of the love of children, of the love of parents, of the love of God. These pious uses protect the appellation, and preserve it from the ignominy poured forth upon its profane associates. Even sensual love would not answer the purpose; since that would include the love of beauty.

[99] See Chap. vi. [Pleasures and Pains], par. xxiv. note.

[100] A man's bearing an affront patiently, that is, without taking this method of doing what is called wiping it off, is thought to import one or other of two things: either that he does not possess that sensibility to the pleasures and pains of the moral sanction, which, in order to render himself a respectable member of society, a man ought to possess: or, that he does not possess courage enough to stake his life for the chance of gratifying that resentment which a proper sense of the value of those pleasures and those pains it is thought would not fail to inspire. True it is, that there are divers other motives, by any of which the same conduct might equally be produced: the motives corresponding to the religious sanction, and the motives that come under the head of benevolence. Piety towards God, the practice in question being generally looked upon as repugnant to the dictates of the religious sanction: sympathy for your antagonist himself, whose life would be put to hazard at the same time with your own; sympathy for his connexions; the persons who are dependent on him in the way of support, or connected with him in the way of sympathy: sympathy for your own connexions: and even sympathy for the public, in cases where the man is such that the public appears to have a material interest in his life. But in comparison with the love of life, the influence of the religious sanction is known to be in general but weak: especially among people of those classes who are here in question: a sure proof of which is the prevalence of this very custom. Where it is so strong as to preponderate, it is so rare, that, perhaps, it gives a man a place in the calendar: and, at any rate, exalts him to the rank of martyr. Moreover, the instances in which

either private benevolence or public spirit predominate over the love of life, will also naturally be but rare: and, owing to the general propensity to detraction, it will also be much rarer for them to be thought to do so. Now, when three or more motives, any one of them capable of producing a given mode of conduct, apply at once, that which appears to be the most powerful, is that which will of course be deemed to have actually done the *most:* and, as the bulk of mankind, on this as on other occasions, are disposed to decide peremptorily upon superficial estimates, it will generally be looked upon as having done the whole.

The consequence is, that when a man of a certain rank forbears to take this chance of revenging an affront, his conduct will, by most people, be imputed to the love of life: which, when it predominates over the love of reputation, is, by a not unsalutary association of ideas, stigmatized with the reproachful name of cowardice.

[101] I am aware, or at least I hope, that people in general, when they see the matter thus stated, will be ready to acknowledge, that the motive in these cases, whatever be the tendency of the acts which it produces, is not a bad one: but this will not render it the less true, that hitherto, in popular discourse it has been common for men to speak of acts, which they could not but acknowledge to have originated from this source, as proceeding from a bad motive. The same observation will apply to many of the other cases.

[102] Among the Greeks, perhaps the motive, and the conduct it gave birth to, would, in such a case, have been rather approved than disapproved of. It seems to have been deemed an act of heroism on the part of Hercules, to have delivered his friend Theseus from hell: though divine justice, which held him there, should naturally have been regarded as being at least upon a footing with human justice. But to divine justice, even when acknowledged under that character, the respect paid at that time of day does not seem to have been very profound, or well-settled: at present, the respect paid to it is profound and settled enough, though the name of it is but too often applied to dictates which could have had no other origin than the worst sort of human caprice.

[103] Here, as elsewhere, it may be observed, that the same words which are mentioned as names of motives, are also many of them names of passions, appetites, and affections: fictitious entities, which are framed only by considering pleasures or pains in some particular point of view. Some of them are also names of moral qualities. This branch of nomenclature is remarkably entangled: to unravel it completely would take up a whole volume; not a syllable of which would belong properly to the present design.

[104] See ch. v. [Pleasures and Pains], par. xxiv, xxv.

[105] It may seem odd at first sight to speak of the love of ease as giving birth to action: but exertion is as natural an effect of the love of ease as inaction is, when a smaller degree of exertion promises to exempt a man from a greater.

[106] 'Religion,' says the pious Addison, somewhere in the Spectator, 'is the highest species of self-love.'

[107] *Laws and dictates conceived as issuing from motives.* When a man is supposed to be prompted by any motive to engage, or not to engage, in such or such an action, it may be of use, for the convenience of discourse, to speak of such motive as giving birth to an imaginary kind of *law* or *dictate*, injoining him to engage, or not to engage, in it [See ch. i].

[108] See ch. iv. [Value], and ch. vi. [Sensibility], par. xxi.

[109] See ch. ix. [Consciousness].

[110] Or valuable. See ch. iv. [Value].

[111] See B. II. tit. [Evidence].

[112] See ch. vi. [Sensibility], par. xii, xiii.

[113] Strictly speaking, habit, being but a fictitious entity, and not really any thing distinct from the acts or perceptions by which it is said to be formed, cannot be the cause of any thing. The enigma, however, may be satisfactorily solved upon the principle of association, of the nature and force of which a very satisfactory account may be seen in Dr. Priestley's edition of Hartley on Man.

[114] Ch. ii. [Principles Adverse], par. xviii.

[115] Sometimes, in order the better to conceal the cheat (from their own eyes doubtless as well as from others) they set up a phantom of their own, which they call Justice: whose dictates are to modify (which being explained, means to op-

pose) the dictates of benevolence. But justice, in the only sense in which it has a meaning, is an imaginary personage, feigned for the convenience of discourse, whose dictates are the dictates of utility, applied to certain particular cases. Justice, then, is nothing more than an imaginary instrument, employed to forward on certain occasions, and by certain means, the purposes of benevolence. The dictates of justice are nothing more than a part of the dictates of benevolence, which, on certain occasions, are applied to certain subjects; to wit, to certain actions.

[116] See ch. ii. [Principles Adverse, &c.]

[117] See ch. vi. [Sensibility], par. xxi.

[118] See *supra*, par. xxxvii.

[119] See ch. vii. [Actions], par. viii.

[120] The idea of the case here supposed is taken from an anecdote in real history, but varies from it in several particulars.

[121] See B. I. tit. [Rebellion].

[122] See B. I. tit. [Simp. corp. injuries]. Ib. tit. [Homicide].

[123] See ch. xi. [Dispositions].

[124] See Append. tit. [Preventive Institutions].

CHAPTER XI.

[125] It might also be termed virtuous, or vicious. The only objection to the use of those terms on the present occasion is, the great quantity of good and bad repute that respectively stand annexed to them. The inconvenience of this is, their being apt to annex an ill-proportioned measure of disrepute to dispositions which are ill-constituted only with respect to the party himself: involving them in such a degree of ignominy as should be appropriated to such dispositions only as are mischievous with regard to others. To exalt weaknesses to a level with crimes, is a way to diminish the abhorrence which ought to be reserved for crimes. To exalt small evils to a level with great ones, is the way to diminish the share of attention which ought to be paid to great ones.

[126] See ch. viii.

[127] See ch. ix.

[128] A *disposition, from which proceeds a habit of doing mischief, cannot be a good one.* To suppose a man to be of a good disposition, and at the same time likely, in virtue of that very disposition, to engage in an habitual train of mischievous actions, is a contradiction in terms: nor could such a proposition ever be advanced, but from the giving, to the thing which the word disposition is put for, a reality which does *not* belong to it. If then, for example, a man of religious disposition should, in virtue of that very disposition, be in the habit of doing mischief, for instance, by persecuting his neighbours, the case must be, either that his disposition, though good in certain respects, is not good upon the whole: or that a religious disposition is not in general a good one.

[129] See ch. xii. [Consequences], and Code, B. I. tit. [Theft].

[130] See ch. x. [Motives].

[131] *The bulk of mankind apt to depreciate this motive.* The bulk of mankind, ever ready to depreciate the character of their neighbours, in order, indirectly, to exalt their own, will take occasion to refer a motive to the class of bad ones as often as they can find one still better, to which the act might have owed its birth. Conscious that his own motives are not of the best class, or persuaded that if they be, they will not be referred to that class by others; afraid of being taken for a dupe, and anxious to show the reach of his penetration; each man takes care, in the first place, to impute the conduct of every other man to the least laudable of the motives that can account for it: in the next place, when he has gone as far that way as he can, and cannot drive down the individual motive to any lower class, he changes his battery, and attacks the very class itself. To the love of reputation he will accordingly give a bad name upon every occasion, calling it ostentation, vanity, or vain-glory.

Partly to the same spirit of detraction, the natural consequence of the sensibility of men to the force of the moral sanction, partly to the influence of the principle of asceticism, may, perhaps, be imputed the great abundance of bad names of motives, in comparison of such as are good or neutral: and,

in particular, the total want of neutral names for the motives of sexual desire, physical desire in general, and pecuniary interest. The superior abundance, even of good names, in comparison of neutral ones, would, if examined, be found rather to confirm than disprove the above remark. The language of a people on these points may, perhaps, serve in some measure as a key to their moral sentiments. But such speculative disquisitions are foreign to the purpose of the present work.

[182] See the case of Duels discussed in B. I. tit. [Homicide].

[183] See B. I. tit. [Offences against Religion].

[184] Love of the pleasures of the palate.

[185] Pecuniary interest.

[186] *Supra*, par. xxvii, xxviii.

[187] See B. I. tit. [Confinement].

CHAPTER XII.

[188] See ch. vi. [Sensibility].

[189] Viz. a *pain of privation*. See ch. v. [Pleasures and Pains], xvii.

[140] Viz. a *pain of apprehension*, grounded on the prospect of organical pain, or whatever other mischiefs might have ensued from the ill treatment. Ib. xxx.

[141] See ch. xi. [Dispositions], xl.

[142] To wit, in virtue of the pain it may give a man to be a witness to, or otherwise conscious of, the sufferings of a fellow-creature: especially when he is himself the cause of them: in a word, the pain of sympathy. See ch. v. [Pleasures and Pains], xxvi.

[143] See Hom. Odyss. L. xix. l. 395; ib. L. iii. l. 71. Plato de Rep. L. i. p. 576, edit. Ficin. Thucyd. L. i.—and see B. I. tit. [Offences against external security].

[144] To the former of these branches is opposed so much of the force of any punishment, as is said to operate in the way of *reformation*: to the latter, so much as is said to operate in the way of *example*. See ch. xiii. [Cases unmeet], par. ii. note.

[145] There may be other points of view, according to which

mischief might be divided, besides these: but this does not prevent the division here given from being an exhaustive one. A line may be divided in any one of an infinity of ways, and yet without leaving in any one of those cases any remainder. See ch. xvi. [Division] i. note.

[146] Ch. v. [Pleasures and Pains] i.

[147] See ch. xvi. [Division] iv. note.

[148] Ch. xvi.

[149] See ch. vii. [Actions] viii.

[150] The investigation might, by a process rendered obvious by analogy, be extended to the consequences of an act of a beneficial nature. In both instances a *third* order of consequences may be reckoned to have taken place, when the influence of the act, through the medium of the passive faculty of the patient, has come to affect his active faculty. In this way, 1. Evil may flow out of *evil:*—instance; the exertions of industry put a stop to by the extinction of inducement, resulting from a continued chain of acts of robbery or extortion. 2. *Good out of evil:*—instance; habits of depredation put a stop to by a steady course of punishment. 3. *Evil out of good:*—instance; habits of industry put a stop to by an excessive course of gratuitous bounty. 4. *Good out of good:*—instance; a constant and increasing course of industry, excited and kept up by the rewards afforded by a regular and increasing market for the fruits of it.

[151] An act of homicide, for instance, is not rendered innocent, much less beneficial, merely by its proceeding from a principle of religion, of honour (that is, of love of reputation) or even of benevolence. When Ravaillac assassinated Henry IV. it was from a principle of religion. But this did not so much as abate from the mischief of the act. It even rendered the act still more mischievous, for a reason that we shall see presently, than if it had originated from a principle of revenge. When the conspirators against the late king of Portugal attempted to assassinate him, it is said to have been from a principle of honour. But this, whether it abated or no, will certainly not be thought to have outweighed, the mischief of the act. Had a son of Ravaillac's, as in the case before supposed [Ch. xi. [Disposition] xv.], merely on the score

of filial affection, and not in consequence of any participation in his crime, put him to death in order to rescue him from the severer hands of justice, the motive, although it should not be thought to afford any proof of a mischievous disposition, and should, even in case of punishment, have made such rescuer an object of pity, would hardly have made the act of rescue a beneficial one.

151a The prosecution of offences, for instance, proceeds most commonly from one or other, or both together, of two motives, the one of which is of the self-regarding, the other of the dissocial kind: viz. pecuniary interest, and ill-will: from pecuniary interest, for instance, whenever the obtaining pecuniary amends for damage suffered is one end of the prosecution. It is common enough indeed to hear men speak of prosecutions undertaken from *public spirit*; which is a branch, as we have seen [See ch. x. [Motives] xxv.], of the principle of benevolence. Far be it from me to deny but that such a principle may very frequently be an ingredient in the sum of motives, by which men are engaged in a proceeding of this nature. But whenever such a proceeding is engaged in from the sole influence of public spirit, uncombined with the least tincture of self-interest, or ill-will, it must be acknowledged to be a proceeding of the heroic kind. Now acts of heroism are, in the very essence of them, but rare: for if they were common, they would not be acts of heroism. But prosecutions for crimes are very frequent, and yet, unless in very particular circumstances indeed, they are never otherwise than beneficial.

152 Ch. iv. [Value].

153 It is for this reason that a threat, or other personal outrage, when committed on a stranger, in pursuance of a scheme of robbery, is productive of more mischief in society, and accordingly is, perhaps, every where more severely punished, than an outrage of the same kind offered to an acquaintance, in prosecution of a scheme of vengeance. No man is always in a rage. But, at all times, every man, more or less, loves money. Accordingly, although a man by his quarrelsomeness should for once have been engaged in a bad action, he may nevertheless remain a long while, or even his

whole life-time, without engaging in another bad action of the same kind: for he may very well remain his whole life-time without engaging in so violent a quarrel: nor at any rate will he quarrel with more than one, or a few people at a time. But if a man, by his love of money, has once been engaged in a bad action, such as a scheme of robbery, he may at any time, by the influence of the same motive, be engaged in acts of the same degree of enormity. For take men throughout, if a man loves money to a certain degree to-day, it is probable that he will love it, at least in equal degree, to-morrow. And if a man is disposed to acquire it in that way, he will find inducement to rob, wheresoever and whensoever there are people to be robbed.

154 If a man happen to take it into his head to assassinate with his own hands, or with the sword of justice, those whom he calls heretics, that is, people who think, or perhaps only speak, differently upon a subject which neither party understands, he will be as much inclined to do this at one time as at another. Fanaticism never sleeps: it is never glutted: it is never stopped by philanthropy; for it makes a merit of trampling on philanthropy: it is never stopped by conscience; for it has pressed conscience into its service. Avarice, lust, and vengeance, have piety, benevolence, honour; fanaticism has nothing to oppose it.

CHAPTER XIII.

155 *What concerns the* end, *and several other topics relative to punishment, dismissed to another work.* What follows, relative to the subject of punishment, ought regularly to be preceded by a distinct chapter on the ends of punishment. But having little to say on that particular branch of the subject, which has not been said before, it seemed better, in a work, which will at any rate be but too voluminous, to omit this title, reserving it for another, hereafter to be published intituled *The Theory of Punishment.*† To the same work I must refer the analysis of the several possible modes of punishment, a particular and minute examination of the

nature of each, and of its advantages and disadvantages, and various other disquisitions, which did not seem absolutely necessary to be inserted here. A very few words, however, concerning the *ends* of punishment, can scarcely be dispensed with.

Concise view of the ends of punishment. The immediate principal end of punishment is to control action. This action is either that of the offender, or of others: that of the offender it controls by its influence, either on his will, in which case it is said to operate in the way of *reformation*; or on his physical power, in which case it is said to operate by *disablement*: that of others it can influence no otherwise than by its influence over their wills; in which case it is said to operate in the way of *example*. A kind of collateral end, which it has a natural tendency to answer, is that of affording a pleasure or satisfaction to the party injured, where there is one, and, in general, to parties whose ill-will, whether on a self-regarding account, or on the account of sympathy or antipathy, has been excited by the offence. This purpose, as far as it can be answered *gratis*, is a beneficial one. But not punishment ought to be allotted merely to this purpose, because (setting aside its effects in the way of control) not such pleasure is ever produced by punishment as can be equivalent to the pain. The punishment, however, which is allotted to the other purpose, ought, as far as it can be done without expense, to be accommodated to this. Satisfaction thus administered to a party injured, in the shape of a dissocial pleasure [See ch. x. [Motives].], may be styled a vindictive satisfaction or compensation: as a compensation administered in the shape of a self-regarding profit, or stock of pleasure, may be styled a lucrative one. See B. I. tit. vi. [Compensation]. Example is the most important end of all, in proportion as the *number* of the persons under temptation to offend is to *one*.

† This is the work which, from the Author's papers, has since been published by Mr. Dumont in French, in company with *The Theory of Reward* added to it, for the purpose of mutual illustration. It is in contemplation to publish them both in

English, from the Author's manuscripts, with the benefit of any amendments that have been made by Mr. Dumont. [*Note to Edition of* 1823.]

[156] See B. I. tit. [Justifications].

[157] See supra, ch. iv. [Value].

[158] See Book I. tit. [Justifications].

[159] *Hence the favour shown to the offences of responsible offenders: such as simple mercantile frauds.* This, for example, seems to have been one ground, at least, of the favour shown by perhaps all systems of laws, to such offenders as stand upon a footing of responsibility: shown, not directly indeed to the persons themselves; but to such offences as none but responsible persons are likely to have the opportunity of engaging in. In particular, this seems to be the reason why embezzlement, in certain cases, has not commonly been punished upon the footing of theft: nor mercantile frauds upon that of common sharping. [See tit. [Simple merc. Defraudment].]

[160] See B. II. Appendix, tit. iii. [Promulgation].

[161] *In infancy and intoxication the case can hardly be proved to come under the rule.* Notwithstanding what is here said, the cases of infancy and intoxication (as we shall see hereafter) cannot be looked upon in practice as affording sufficient grounds for absolute impunity. But this exception in point of practice is no objection to the propriety of the rule in point of theory. The ground of the exception is neither more nor less than the difficulty there is of ascertaining the matter of fact: viz. whether at the requisite point of time the party was actually in the state in question; that is, whether a given case comes really under the rule. Suppose the matter of fact capable of being perfectly ascertained, without danger or mistake, the impropriety of punishment would be as indubitable in these cases as in any other. [See B. I. tit. iv. [Exemptions], and tit. vii. [Extenuations].]

The reason for not punishing in these three cases is commonly put upon a wrong footing. The reason that is commonly assigned for the establishing an exemption from punishment in favour of infants, insane persons, and persons under intoxication, is either false in fact, or confusedly ex-

pressed. The phrase is, that the will of these persons concurs not with the act; that they have no vicious will; or, that they have not the free use of their will. But suppose all this to be true? What is it to the purpose? Nothing: except in as far as it implies the reason given in the text.

[162] See ch. viii. [Intentionality].

[163] See ch. ix. [Consciousness].

[164] *Why the influence of the moral and religious sanctions is not mentioned in the same view.* The influences of the *moral* and *religious* sanctions, or, in other words, of the motives of *love of reputation* and *religion*, are other causes, the force of which may, upon particular occasions, come to be greater than that of any punishment which the legislator is *able*, or at least which he will *think proper*, to apply. These, therefore, it will be proper for him to have his eye upon. But the force of these influences is variable and different in different times and places: the force of the foregoing influences is constant and the same, at all times and every where. These, therefore, it can never be proper to look upon as safe grounds for establishing absolute impunity: owing (as in the above-mentioned cases of infancy and intoxication) to the impracticability of ascertaining the matter of fact.

[165] See ch. v. [Pleasures and Pains].

[166] See ch. xii. [Consequences] iv.

CHAPTER XIV.

[167] By *offences* I mean, at present, acts which appear to him to have a tendency to produce mischief.

[168] *The same rule applicable to motives in general.* The same rules (it is to be observed) may be applied, with little variation, to rewards as well as punishment: in short, to motives in general, which, according as they are of the pleasurable or painful kind, are of the nature of *reward* or *punishment:* and, according as the act they are applied to produce is of the positive or negative kind, are styled impelling or restraining. See ch. x. [Motives] xliii.

[169] *Profit may be of any other kind, as well as pecuniary.* By the profit of an offence, is to be understood, not merely the

pecuniary profit, but the pleasure or advantage, of whatever kind it be, which a man reaps, or expects to reap, from the gratification of the desire which prompted him to engage in the offence. [See ch. x. [Motives] § 1.]

Impropriety of the notion that the punishment ought not to increase with the temptation. It is the profit (that is, the expectation of the profit) of the offence that constitutes the *impelling* motive, or, where there are several, the sum of the impelling motives, by which a man is prompted to engage in the offence. It is the punishment, that is, the expectation of the punishment, that constitutes the *restraining* motive, which, either by itself, or in conjunction with others, is to act upon him in a *contrary* direction, so as to induce him to abstain from engaging in the offence. Accidental circumstances apart, the strength of the temptation is as the force of the seducing, that is, of the impelling motive or motives. To say then, as authors of great merit and great name have said, that the punishment ought not to increase with the strength of the temptation, is as much as to say in mechanics, that the moving force or *momentum* of the *power* need not increase in proportion to the momentum of the *burthen*.

[170] Beccaria, dei diletti, § 6. id. trad. par. Morellet, § 23.

[171] See ch. xi. [Dispositions] xxix.

[172] It is a well-known adage, though it is to be hoped not a true one, that every man has his price. It is commonly meant of a man's virtue. This saying, though in a very different sense, was strictly verified by some of the Anglo-Saxon laws: by which a fixed price was set, not upon a man's virtue indeed, but upon his life: that of the sovereign himself among the rest. For 200 shillings you might have killed a peasant: for six times as much, a nobleman: for six-and-thirty times as much you might have killed the king. [Wilkins' Leg. Anglo-Sax. p. 71, 72. See Hume, Vol. I. App. I. p. 219.] A king in those days was worth exactly 7,200 shillings. If then the heir to the throne, for example, grew weary of waiting for it, he had a secure and legal way of gratifying his impatience: he had but to kill the king with one hand, and pay himself with the other, and all was right. An earl Godwin, or a duke Streon, could have bought the lives of a whole dynasty. It is plain,

that if ever a king in those days died in his bed, he must have had something else, besides this law, to thank for it. This being the production of a remote and barbarous age, the absurdity of it is presently recognised: but, upon examination, it would be found, that the freshest laws of the most civilised nations are continually falling into the same error. [See in particular the *English Statute laws* throughout, *Bonaparte's* Penal Code, and the recently enacted or not enacted *Spanish* Penal Code.—*Note by the Author, July* 1822.] This, in short, is the case wheresoever the punishment is fixed while the profit of delinquency is indefinite: or, to speak more precisely, where the punishment is limited to such a mark, that the profit of delinquency may reach beyond it.

[173] See ch. xiii. [Cases unmeet], § 1.

[174] See ch. xi. [Dispositions], xlii.

[175] *Example—Incendiarism and coining.* For example, if it can ever be worth while to be at the expense of so horrible a punishment as that of burning alive, it will be more so in the view of preventing such a crime as that of murder or incendiarism, than in the view of preventing the uttering of a piece of bad money. See B. I. tit. [Defraudment touching the Coin] and [Incendiarism].

[176] Espr. des Loix, L. vi. c. 16.

[177] *Example.—In blows given and money stolen.* If any one have any doubt of this, let him conceive the offence to be divided into as many separate offences as there are distinguishable parcels of mischief that result from it. Let it consist, for example, in a man's giving you ten blows, or stealing from you ten shillings. If then, for giving you ten blows, he is punished no more than for giving you five, the giving you five of these ten blows is an offence for which there is no punishment at all: which being understood, as often as a man gives you five blows, he will be sure to give you five more, since he may have the pleasure of giving you these five for nothing. In like manner, if for stealing from you ten shillings, he is punished no more than for stealing five, the stealing of the remaining five of those ten shillings is an offence for which there is no punishment at all. This rule is violated in almost every page of every body of laws I have ever seen.

The profit, it is to be observed, though frequently, is not constantly, proportioned to the mischief: for example, where a thief, along with the things he covets, steals others which are of no use to him. This may happen through wantonness, indolence, precipitation, &c. &c.

[178] See ch. vi. [Sensibility].

[179] See ch. iv. [Value].

[180] It is for this reason, for example, that simple compensation is never looked upon as sufficient punishment for theft or robbery.

[181] *A punishment applied by way of moral lesson, what.* A punishment may be said to be calculated to answer the purpose of a moral lesson, when, by reason of the ignominy it stamps upon the offence, it is calculated to inspire the public with sentiments of aversion towards those pernicious habits and dispositions with which the offence appears to be connected; and thereby to inculcate the opposite beneficial habits and dispositions.

Example.—In simple corporal injuries. It is this, for example, if any thing, that must justify the application of so severe a punishment as the infamy of a public exhibition, hereinafter proposed, for him who lifts up his hand against a woman, or against his father. See B. I. tit. [Simp. corporal injuries].

Example.—In military laws. It is partly on this principle, I suppose, that military legislators have justified to themselves the inflicting death on the soldier who lifts up his hand against his superior officer.

[182] See ch. xiii. [Cases unmeet], § 4.

[183] See B. II. tit. [Purposes], Append. tit. [Composition].

[184] *Proportionality carried very far in the present work—why.* Notwithstanding this rule, my fear is, that in the ensuing model, I may be thought to have carried my endeavours at proportionality too far. Hitherto scarce any attention has been paid to it. Montesquieu seems to have been almost the first who has had the least idea of any such thing. In such a matter, therefore, excess seemed more eligible than defect. The difficulty is to invent: that done, if any thing seems superfluous, it is easy to retrench.

[185] See B. I. tit. [Punishments].

[186] See Append. tit. [Promulgation].

[187] There are few madmen but what are observed to be afraid of the strait waistcoat.

[188] See ch. xii. [Consequences], xxxiii.

CHAPTER XV.

[189] By the English law, there are several offences which are punished by a total forfeiture of moveables, not extending to immoveables. This is the case with suicide, and with certain species of theft and homicide. In some cases, this is the principal punishment: in others, even the only one. The consequence is, that if a man's fortune happens to consist in moveables, he is ruined; if in immoveables, he suffers nothing.

[190] See *View of the Hard-Labour Bill*, Lond. 1778, p. 100. For the idea of this property, I must acknowledge myself indebted to an anonymous letter in the St. James's Chronicle, of the 27th of September, 1777; the author of which is totally unknown to me. If any one should be disposed to think lightly of the instruction, on account of the channel by which it was first communicated, let him tell me where I can find an idea more ingenious or original.

[191] See Montesq. Esp. des Loix, L. xii. ch. iv. He seems to have the property of characteristicalness in view; but that the idea he had of it was very indistinct, appears from the extravagant advantages he attributes to it.

[192] See ch. vii. [Actions], iii.

[193] Besides this, there are a variety of other ways in which the punishment may bear an analogy to the offence. This will be seen by looking over the table of punishments.

[194] See ch. xiii. [Cases unmeet], § 1, 2. note.

[195] Ib. § 4. par. iii.

[196] See B. I. tit. [Punishments].

[197] See B. II. tit. [Execution].

[198] Ch. xiii. [Cases unmeet], par. iii.

[199] Ib. note.

[200] See ch. xiii. [Cases unmeet], par. ii. note.

[201] See ch. x. [Motives].

[202] See B. I. tit. [Offences against Justice].

[203] See B. I. tit. [Punishments].

[204] *Characteristicalness renders a punishment, 1. memorable: 2. exemplary: 3. popular.* The property of characteristicalness, therefore, is useful in a mode of punishment in three different ways: 1. It renders a mode of punishment, before infliction, more easy to be borne in mind: 2. It enables it, especially after infliction, to make the stronger impression, when it is there; that is, renders it the more *exemplary:* 3. It tends to render it more acceptable to the people, that is, it renders it the more *popular.*

[205] See ch. xiii. [Cases unmeet], § v.

[206] See ch. xiii. [Cases unmeet], § iv. par. iv.

[207] See View of the Hard Labour Bill, p. 109.

[208] See ch. xiii. [Cases unmeet], ii. note.

CHAPTER XVI.

[209] *Method pursued in the following divisions.* This chapter is an attempt to put our ideas of offences into an exact method. The particular uses of *method* are various: but the general one is, to enable men to understand the things that are the subjects of it. To understand a thing, is to be acquainted with its qualities or properties. Of these properties, some are common to it with other things; the rest, peculiar. But the qualities which are peculiar to any one sort of thing are few indeed, in comparison with those which are common to it with other things. To make it known in respect of its *difference,* would therefore be doing little, unless it were made known also by its *genus.* To understand it perfectly, a man must therefore be informed of the points in which it agrees, as well as of those in which it disagrees, with all other things. When a number of objects, composing a logical whole, are to be considered together, all of these possessing with respect to one another a certain congruency or agreement denoted by a certain name, there is but one way of giving a perfect knowledge of their nature; and that is, by distributing them into a system of parcels, each of them a part, either of some other parcel, or, at any rate, of the common whole. This

can only be done in the way of *bipartition*, dividing each superior branch into two, and but two, immediately subordinate ones; beginning with the logical whole, dividing that into two parts, then each of those parts into two others; and so on. These first-distinguished parts agree in respect of those properties which belong to the whole: they differ in respect of those properties which are peculiar to each. To divide the whole into more than two parcels at once, for example into three, would not answer the purpose; for, in fact, it is but two objects that the mind can compare together exactly at the same time. Thus then, let us endeavour to deal with offences; or rather, strictly speaking, with acts which possess such properties as seem to indicate them fit to be constituted offences. The task is arduous; and, as *yet* at least, perhaps *for ever*, above our force. There is no speaking of objects but by their names: but the business of giving them names has always been prior to the true and perfect knowledge of their natures. Objects the most dissimilar have been spoken of and treated as if their properties were the same. Objects the most similar have been spoken of and treated as if they had scarce any thing in common. Whatever discoveries may be made concerning them, how different soever their congruencies and disagreements may be found to be from those which are indicated by their names, it is not without the utmost difficulty that any means can be found out of expressing those discoveries by a conformable set of names. Change the import of the old names, and you are in perpetual danger of being misunderstood: introduce an entire new set of names, and you are sure not to be understood at all. Complete success, then, is, as yet at least, unattainable. But an attempt, though imperfect, may have its use: and, at the worst, it may accelerate the arrival of that perfect system, the possession of which will be the happiness of some maturer age. Gross ignorance descries no difficulties; imperfect knowledge finds them out, and struggles with them: it must be perfect knowledge that overcomes them.

[210] See ch. xiii. [Cases unmeet], § ii. 1.

[211] *Persons assignable, how.* That is, either by name, or at least by description, in such manner as to be sufficiently dis-

tinguished from all others; for instance, by the circumstance of being the owner or occupier of such and such goods. See B. I. tit. [Personation], supra, ch. xii. [Consequences], xv.

[212] *Limits between private, semi-public, and public offences, are, strictly speaking, undistinguishable.* With regard to offences against a class or neighbourhood, it is evident, that the fewer the individuals are, of which such class is composed, and the narrower that neighbourhood is, the more likely are the persons, to whom the offence is detrimental, to become assignable; insomuch that, in some cases, it may be difficult to determine concerning a given offence, whether it be an offence against individuals, or against a class or neighbourhood. It is evident also, that the larger the class or neighbourhood is, the more it approaches to a coincidence with the great body of the state. The three classes, therefore, are liable to a certain degree, to run into one another, and be confounded. But this is no more than what is the case, more or less, with all those ideal compartments under which men are wont to distribute objects for the convenience of discourse.

[213] See ch. vii. [Actions], xiii.

[214] *The imperfections of language an obstacle to arrangement.* 1. Offences by *falsehood:* 2. Offences against *trust.* See also par. xx. to xxx. and par. lxvi. Maturer views have suggested the feasibility, and the means, of ridding the system of this anomalous excrescence. Instead of considering these as so many *divisions* of offences, divided into *genera*, correspondent and collateral to the several *genera* distinguished by other appellations, they may be considered as so many specific differences, respectively applicable to those *genera.* Thus, in the case of a *simple personal injury*, in the operation of which a plan of falsehood has been employed: it seems more simple and more natural, to consider the offence thus committed as a particular *species* or *modification* of the *genus* of offence termed a *simple personal injury*, than to consider the simple personal injury, when effected by such means, as a modification of the *division* of offences entitled *Offences through falsehood.* By this means the circumstances of the intervention of falsehood as an instrument, and of the existence of a particular obligation of the nature of a trust, will be reduced

to a par with various other classes of circumstances capable of affording grounds of modification, commonly of *aggravation* or *extenuation*, to various genera of offences: instance, *Premeditation*, and *conspiracy*, on the one hand; *Provocation received*, and *intoxication*, on the other. This class will appear, but too plainly, as a kind of botch in comparison of the rest. But such is the fate of science, and more particularly of the moral branch; the distribution of things must in a great measure be dependent on their names: arrangement, the work of mature reflection, must be ruled by nomenclature, the work of popular caprice.

In the book of the laws, offences must therefore be treated of as much as possible under their accustomed names. Generical terms, which are in continual use, and which express ideas for which there are no other terms in use, cannot safely be discarded. When any such occur, which cannot be brought to quadrate with such a plan of classification as appears to be most convenient upon the whole, what then is to be done? There seems to be but one thing; which is, to retain them, and annex them to the regular part of the system in the form of an appendix. Though they cannot, when entire, be made to rank under any of the classes established in the rest of the system, the divisions to which they give title may be broken down into lesser divisions, which may not be alike intractable. By this means, how discordant soever with the rest of the system they may appear to be at first sight, on a closer inspection they may be found conformable.

Irregularity of this class. This must inevitably be the case with the names of offences, which are so various and universal in their nature, as to be capable, each of them, of doing whatever mischief can be done by any other kind or kinds of offences whatsoever. Offences of this description may well be called anomalous.

—which could not be avoided on any other plan. Such offences, it is plain, cannot be show themselves equally intractable under every kind of system. Upon whatever principle the system be constructed, they cannot, any of them, with any degree of propriety, be confined to any one division. If, therefore, they constitute a blemish in the present system, it

is such a blemish as could not be avoided but at the expense of a greater. The class they are here thrown into will traverse, in its subordinate ramifications, the other classes and divisions of the present system: true, but so would they of any other. An irregularity, and that but a superficial one, is a less evil than continual error and contradiction. But even this slight deviation, which the fashion of language seemed to render unavoidable at the outset, we shall soon find occasion to correct as we advance. For though the first great parcels into which the offences of this class are divided are not referable, any of them, to any of the former classes, yet the subsequent lesser subdivisions *are*.

[215] See ch. vii. [Actions], iii. and xxiv.

In what manner pleasure and pain depend upon the relation a man bears to exterior objects. If, by reason of the word *relation*, this part of the division should appear obscure, the unknown term may be got rid of in the following manner. Our ideas are derived, all of them, from the senses; pleasurable and painful ones, therefore, among the rest: consequently, from the operation of sensible objects upon our senses. A man's happiness, then, may be said to depend more or less upon the *relation* he bears to any sensible object, when such object is in a way that stands a chance, greater or less, of producing to him, or averting from him, pain or pleasure. Now this, if at all, it must do in one or other of two ways; 1. In an *active* way, properly so called; viz. by motion: or, 2. In a *passive* or quiescent way, by being moved to, or acted upon: and in either case, either, 1. in an *immediate* way, by acting upon, or being acted on by, the organs of sense, without the intervention of any other external object: or, 2. in a more or less *remote* way, by acting upon, or being acted on by, some other external object, which (with the intervention of a greater or less number of such objects, and at the end of more or less considerable intervals of time) will come at length to act upon, or be acted upon by, those organs. And this is equally true, whether the external objects in question be things or persons. It is also equally true of pains and pleasures of the mind, as of those of the body: all the difference is, that in the production of these, the pleasure or pain may

result immediately from the perception which it accompanies: in the production of those of the mind, it cannot result from the action of an object of sense, any otherwise than by *association*; to wit, by means of some connection which the perception has contracted with certain prior ones, lodged already in the memory. [See ch. v. [Pleasures and Pains], xv. xxxi. Ch. x. [Motives], xxxix. note.]

[216] See ch. x. [Motives].

[217] Subsequent consideration has here suggested several alterations. The necessity of adding to *property*, *power*, in the character of a distinguishable as well as valuable object or subject-matter of possession, has presented itself to view: and in regard to the fictitious entity here termed *condition* (for shortness instead of saying *condition in life*), it has been observed to be a sort of composite object, compounded of *property*, *reputation*, *power*, and *right* to *services*. For this *composite* object the more proper place was therefore at the tail of the several *simple* ones.—*Note by the Editor, July*, 1822.

[218] Supra, iv. note.

[219] See ch. xii. [Consequences].

[220] See ch. viii. [Intentionality].

[221] See B. I. tit. [Semi-public offences]. In the mean time that of *pestilence* may serve as an example. A man, without any intention of giving birth to such a calamity, may expose a neighbourhood to the danger of it, by breaking *quarantine* or violating any of those other preventive regulations which governments, at certain conjunctures, may find it expedient to have recourse to, for the purpose of guarding against such danger.

[222] See ch. xiii. [Cases unmeet], § iv.

[223] *Exhaustive method departed from*. In this part of the analysis, I have found it necessary to deviate in some degree from the rigid rules of the exhaustive method I set out with. By me, or by some one else, this method may, perhaps, be more strictly pursued at some maturer period of the science. At present, the benefit that might result from the unrelaxed observance of it, seemed so precarious, that I could not help doubting whether it would pay for the delay and trouble.

Doubtless such a method is eminently instructive: but the fatigue of following it out is so great, not only to the author, but probably also to the reader, that if carried to its utmost length at the first attempt, it might perhaps do more disservice in the way of disgust, than service in the way of information. For knowledge, like physic, how salutary soever in itself, becomes no longer of any use, when made too unpalatable to be swallowed. Mean time, it cannot but be a mortifying circumstance to a writer, who is sensible of the importance of his subject, and anxious to do it justice, to find himself obliged to exhibit what he perceives to be faulty, with any view, how indistinct soever, of something more perfect before his eyes. If there be any thing new and original in this work, it is to the exhaustive method so often aimed at that I am indebted for it. It will, therefore, be no great wonder if I should not be able to quit it without reluctance. On the other hand, the marks of stiffness which will doubtless be perceived in a multitude of places, are chiefly owing to a solicitous, and not perfectly successful, pursuit of this same method. New instruments are seldom handled at first with perfect ease.

[224] The idea of government, it may be observed, is introduced here without any preparation. The fact of its being established, I assume as notorious, and the necessity of it as alike obvious and incontestable. Observations indicating that necessity, if any such should be thought worth looking at in this view, may be found by turning to a passage in a former chapter, where they were incidentally adduced for the purpose of illustration. See ch. xii. [Consequences], § xvii.

[225] See infra, liv. note. Even this head, ample as it is, and vague as it may seem to be, will not, when examined by the principle of utility, serve, any more than another, to secrete any offence which has no title to be placed there. To show the pain or loss of pleasure which is likely to ensue, is a problem, which before a legislator can justify himself in adding the act to the catalogue of offences, he may in this case, as in every other, be called upon to solve.

[226] For examples, see infra, liv. note. This branch of the

business of government, a sort of work of supererogation, as it may be called, in the calendar of political duty, is comparatively but of recent date. It is not for this that the untutored many could have originally submitted themselves to the dominion of the few. It was the dread of evil, not the hope of good, that first cemented societies together. Necessaries come always before luxuries. The state of language marks the progress of ideas. Time out of mind the military department has had a name: so has that of justice: the power which occupies itself in preventing mischief, not till lately, and that but a loose one, the police: for the power which takes for its object the introduction of positive good, no peculiar name, however inadequate, seems yet to have been devised.

[227] The functions of justice, and those of the police, must be apt in many points to run one into another: especially as the business would be very badly managed if the same persons, whose more particular duty it is to act as officers of the police, were not upon occasion to act in the capacity of officers of justice. The ideas, however, of the two functions may still be kept distinct: and I see not where the line of separation can be drawn, unless it be as above.

As to the word *police*, though of Greek extraction, it seems to be of French growth: it is from France, at least, that it has been imported into Great Britain, where it still retains its foreign garb: in Germany, if it did not originate there, it has at least been naturalized. Taken all together, the idea belonging to it seems to be too multifarious to be susceptible of any single definition. Want of words obliged me to reduce the two branches here specified into one. Who would have endured in this place to have seen two such words as the *phthano-paranomic* or *crime-preventing*, and the *phthano-symphoric* or *calamity-preventing*, branches of the police? the inconveniences of uniting the two branches under the same denomination, are, however, the less, inasmuch as the operations requisite to be performed for the two purposes will in many cases be the same. Other functions, commonly referred to the head of police, may be referred either to the head of that power which occupies itself in promoting in a positive way the increase of the national felicity, or of that which em-

ploys itself in the management of the public wealth. See infra, liv. note.

[228] It is from abroad that those pernicious enterprises are most apt to originate, which come backed with a greater quantity of physical force than the persons who are in a more particular sense the officers of justice are wont to have at their command. Mischief the perpetration of which is ensured by a force of such magnitude, may therefore be looked upon in general as the work of *external* adversaries. Accordingly, when the persons by whom it is perpetrated are in such force as to bid defiance to the ordinary efforts of justice, they loosen themselves from their original denomination in proportion as they increase in force, till at length they are looked upon as being no longer members of the state, but as standing altogether upon a footing with external adversaries. Give force enough to robbery, and it swells into rebellion: give permanence enough to rebellion, and it settles into hostility.

[229] It must be confessed, that in common speech the distinction here established between the public wealth and the national wealth is but indifferently settled: nor is this to be wondered at; the ideas themselves, though here necessary to be distinguished, being so frequently convertible. But I am mistaken if the language will furnish any other two words that would express the distinction better. Those in question will, I imagine, be allowed to be thus far well chosen, that if they were made to change their places, the import given to them would not appear to be quite so proper as that which is given to them as they stand at present.

[230] I should have been afraid to have said *necessarily*. In the United Provinces, in the Helvetic, or even in the Germanic body, where is that one assembly in which an absolute power over the whole resides? where was there in the Roman Commonwealth? I would not undertake for certain to find an answer to all these questions.

[231] See par. xvii. with regard to *justice*.

[232] It may be observed, that upon this occasion I consider religion in no other light, than in respect of the influence it may have on the happiness of the *present* life. As to the effects it may have in assuring us of and preparing us for a bet-

ter life to come, this is a matter which comes not within the cognizance of the legislator. See tit. [Offences against religion].

I say offences against *religion*, the fictitious entity: not offences against God, the real being. For, what sort of pain should the act of a feeble mortal occasion to a being unsusceptible of pain? How should an offence affect him? Should it be an offence against his person, his property, his reputation, or his condition?

It has commonly been the way to put offences against religion foremost. The idea of precedence is naturally enough connected with that of reverence. *Ek Dios archomestha.* But for expressing reverence, there are other methods enough that are less equivocal. And in point of method and perspicuity, it is evident, that with regard to offences against religion, neither the nature of the mischief which it is their tendency to produce, nor the reason there may be for punishing them, can be understood, but from the consideration of the several mischiefs which result from the several other sorts of offences. In a political view, it is only because those others are mischievous, that offences against religion as so too.

[238] This division of falsehoods, it is to be observed, is not regularly drawn out: that being what the nature of the case will not here admit of. Falsehood may be infinitely diversified in other ways than these. In a particular case, for instance, simple falsehood when uttered by writing, is distinguished from the same falsehood when uttered by word of mouth; and has had a particular name given to it accordingly. I mean, where it strikes against reputation; in which case, the instrument it has been uttered by has been called a *libel*. Now it is obvious, that in the same manner it might have received a distinct name in all other cases where it is uttered by writing. But there has not happened to be any thing in particular that has disposed mankind in those cases to give it such a name. The case is, that among the infinity of circumstances by which it might have been diversified, those which constitute it a libel, happen to have engaged a peculiar share of attention on the part of the institutors of language; either in virtue of the influence which these circumstances have on

the tendency of the act, or in virtue of any particular degree of force with which on any other account they may have disposed it to strike upon the imagination.

[234] See B. I. tit. [Falsehoods].

[235] There are two other circumstances still more material; viz. 1. The parties whose interest is affected by the falsehood: 2. The point or article in which that interest is affected. These circumstances, however, enter not into the composition of the generical character. Their use is, as we shall see, to characterize the several species of each genus. See B. I. tit. [Falsehoods].

[236] Ibid.

[237] Power *and* right, *why no complete definition is here given of them.* Powers, though not a species of rights (for the two sorts of fictitious entities, termed a *power* and a *right*, are altogether disparate) are yet so far included under rights, that wherever the word *power* may be employed, the word *right* may also be employed: The reason is, that wherever you may speak of a person as having a power, you may also speak of him as having a right to such power: but the converse of this proposition does not hold good: there are cases in which, though you may speak of a man as having a right, you cannot speak of him as having a power, or in any other way make any mention of that word. On various occasions you have a *right*, for instance, to the services of the magistrate: but if you are a private person, you have no *power* over him: all the power is on his side. This being the case, as the word *right* was employed, the word *power* might perhaps, without any deficiency in the sense, have been omitted. On the present occasion however, as in speaking of trusts this word is commonly made more use of than the word *right*, it seemed most eligible, for the sake of perspicuity, to insert them both.

It may be expected that, since the word *trust* has been here expounded, the words *power* and *right*, upon the meaning of which the exposition of the word *trust* is made to depend, should be expounded also: and certain it is, that no two words can stand more in need of it than these do. Such exposition I accordingly set about to give, and indeed have actually drawn up: but the details into which I found it nec-

essary to enter for this purpose, were of such length as to take up more room than could consistently be allotted to them in this place. With respect to these words, therefore, and a number of others, such as *possession*, *title*, and the like, which in point of import are inseparably connected with them, instead of exhibiting the exposition itself, I must content myself with giving a general idea of the plan which I have pursued in framing it: and as to every thing else, I must leave the import of them to rest upon whatever footing it may happen to stand upon in the apprehension of each reader. Power and right, and the whole tribe of fictitious entities of this stamp, are all of them, in the sense which belongs to them in a book of jurisprudence, the results of some manifestation or other of the legislator's will with respect to such or such an act. Now every such manifestation is either a prohibition, a command, or their respective negations; viz. a permission, and the declaration which the legislator makes of his will when on any occasion he leaves an act uncommanded. Now, to render the expression of the rule more concise, the commanding of a positive act may be represented by the prohibition of the negative act which is opposed to it. To know then how to expound a right, carry your eye to the act which, in the circumstances in question, would be a violation of that right: the law creates the right by prohibiting that act. Power, whether over a man's own person, or over other persons, or over things, is constituted in the first instance by permission: but in as far as the law takes an active part in corroborating it, it is created by prohibition, and by command: by prohibition of such acts (on the part of other persons) as are judged incompatible with the exercise of it; and upon occasion, by command of such acts as are judged to be necessary for the removal of such or such obstacles of the number of those which may occur to impede the exercise of it. For every right which the law confers on one party, whether that party be an individual, a subordinate class of individuals, or the public, it thereby imposes on some other party a *duty* or *obligation*. But there may be laws which command or prohibit acts, that is, impose duties, without any other view than the benefit of the agent: these generate

no rights: duties, therefore, may be either *extra-regarding* or *self-regarding*: extra-regarding have rights to correspond to them: self-regarding, none.

That the exposition of the words *power* and *right* must, in order to be correct, enter into a great variety of details, may be presently made appear. One branch of the system of rights and powers, and but one, are those of which property is composed: to be correct, then, it must, among other things, be applicable to the whole tribe of modifications of which property is susceptible. But the commands and prohibitions, by which the *powers* and *rights* that compose those several modifications are created, are of many different forms: to comprise the exposition in question within the compass of a single paragraph, would therefore be impossible: to take as many paragraphs for it as would be necessary, in order to exhibit these different forms, would be to engage in a detail so ample, that the analysis of the several possible species of property would compose only a part of it. This labour, uninviting as it was, I have accordingly undergone: but the result of it, as may well be imagined, seemed too voluminous and minute to be exhibited in an outline like the present. Happily it is not necessary, except only for the scientific purpose of arrangement, to the understanding of any thing that need be said on the penal branch of the art of legislation. In a work which should treat of the civil branch of that art, it would find its proper place: and in such a work, if conducted upon the plan of the present one, it would be indispensable. Of the limits which seem to separate the one of these branches from the other, a pretty ample description will be found in the next chapter: from which some further lights respecting the course to be taken for developing the notions to be annexed to the words *right* and *power*, may incidentally be collected. See in particular, § 3 and 4. See also par. lv. of the present chapter.

I might have cut this matter very short, by proceeding in the usual strain, and saying, that a power was a faculty, and that a right was a privilege, and so on, following the beaten track of definition. But the inanity of such a method, in cases like the present, has been already pointed out [See Fragment of Government, ch. v. § 6. note.]: a power is not a—any

thing: neither is a right a—any thing: the case is, they have neither of them any superior genus: these, together with *duty*, *obligation*, and a multitude of others of the same stamp, being of the number of those fictitious entities, of which the import can by no other means be illustrated than by showing the relation which they bear to real ones.

[288] The first of these parties is styled in the law language, as well as in common speech, by the name here given to him. The other is styled, in the technical language of the English law, a *cestuy que trust*: in common speech, as we have observed, there is, unfortunately, no name for him. As to the law phrase, it is antiquated French, and though complex, it is still elliptical, and to the highest degree obscure. The phrase in full length would run in some such manner as this: *cestuy al use de qui le trust est créé*: he to whose use the trust or benefit is created. In a particular case, a *cestuy que trust* is called by the Roman law, *fidei-commissarius*. In imitation of this, I have seen him somewhere or other called in English a *fide-committee*. This term, however, seems not very expressive. A fide-committee, or, as it should have been, a *fidei*-committee, seems, literally speaking, to mean one who is committed to the good faith of another. Good faith seems to consist in the keeping of a promise. But a trust may be created without any promise in the case. It is indeed common enough to exact a promise, in order the more effectually to oblige a man to do that which he is made to promise he will do. But this is merely an accidental circumstance. A trust may be created without any such thing. What is it that constitutes a legal obligation in any case? A command, express or virtual, together with punishment appointed for the breach of it. By the same means may an obligation be constituted in this case as well as any other. Instead of the word *beneficiary*, which I found it necessary to adopt, the sense would be better expressed by some such word as *beneficiendary* (a word analogous in its formation to *referendary*), were it such an one as the ear could bring itself to endure. This would put it more effectually out of doubt, that the party meant was the party who *ought* to receive the benefit, whether he actually receives it or no: whereas the word *beneficiary* might be

understood to intimate, that the benefit was *actually* received: while in offences against trust the mischief commonly is, that such benefit is reaped not by the person it was designed for, but by some other: for instance, the trustee.

[239] It is for shortness' sake that the proposition is stated as it stands in the text. If critically examined, it might be found, perhaps, to be scarcely justifiable by the laws of language. For the fictitious entities, characterised by the two abstract terms, *trust* and *condition*, are not subalternate but disparate. To speak with perfect precision, we should say that he who is invested with a trust is, on that account, spoken of as being invested with a condition: viz. the condition of a trustee. We speak of the condition of a trustee as we speak of the condition of a husband or a father.

[240] Infra, lv.

[241] It is to be observed, that in common speech, in the phrase *the object of a man's property*, the words *the object of* are commonly left out; and by an ellipsis, which, violent as it is, is now become more familiar than the phrase at length, they have made that part of it which consists of the words *a man's property* perform the office of the whole. In some cases then it was only on a *part* of the object that the acts in question might be performed: and to say, on this account, that the object was a man's property, was as much as to intimate that they might be performed on any part. In other cases it was only certain particular acts that might be exercised on the object: and to say of the object that it was his property, was as much as to intimate that any acts whatever might be exercised on it. Sometimes the acts in question were not to be exercised but at a future *time*, nor then, perhaps, but in the case of the happening of a particular event, of which the happening was *uncertain:* and to say of an object that it was his property, was as much as to intimate that the acts in question might be exercised on it at any time. Sometimes the object on which the acts in question were to have their termination, or their commencement, was a human creature: and to speak of one human creature as being the property of another is what would shock the ear every where but where slavery is established, and even there, when applied to persons in any other

condition than that of slaves. Among the first Romans, indeed, the wife herself was the property of her husband; the child, of his father; the servant, of his master. In the civilised nations of modern times, the two first kinds of property are altogether at an end: and the last, unhappily not yet at an end, but however verging, it is to be hoped, towards extinction. The husband's property is now the company [The *consortium*, says the English Law.] of his wife; the father's the guardianship and service of his child; the master's, the service of his servant.

[242] We shall have occasion, a little farther on, to speak of the person in whose hands the trust exists, under the description of the person who possesses, or is in possession of it, and thence of the possession of the trust abstracted from the consideration of the possessor. However different the expression, the import is in both cases the same. So irregular and imperfect is the structure of language on this head, that no one phrase can be made to suit the idea on all the occasions on which it is requisite it should be brought to view: the phrase must be continually shifted, or new modified: so likewise in regard to conditions, and in regard to property. The being invested with, or possessing a condition; the being in possession of an article of property, that is, if the object of the property be corporeal; the having a legal title (defeasible or indefeasible) to the physical possession of it, answers to the being in possession of a trust, or the being the person in whose hands a trust exists. In like manner, to the *exercise* of the *functions* belonging to a trust, or to a condition, corresponds the *enjoyment* of an article of property; that is, if the object of it be corporeal, the *occupation*. These verbal discussions are equally tedious and indispensable. Striving to cut a new road through the wilds of jurisprudence, I find myself continually distressed, for want of tools that are fit to work with. To frame a complete set of new ones is impossible. All that can be done is, to make here and there a new one in cases of absolute necessity, and for the rest, to patch up from time to time the imperfections of the old.

As to the bipartition which this paragraph sets out with, it must be acknowledged not to be of the nature of those which

to a first glance afford a sort of intuitive proof of their being exhaustive. There is not that marked connection and opposition between the terms of it, which subsists between contradictory terms and between terms that have the same common genus. I imagine, however, that upon examination it would be found to be exhaustive notwithstanding: and that it might even be demonstrated so to be. But the demonstration would lead us too far out of the ordinary track of language.

[243] See ch. vii. [Actions], iii.

[244] If advantageous, it will naturally be on account of the *powers* or rights that are annexed to the trust: if disadvantageous, on account of the *duties*.

[245] It may seem a sort of anachronism to speak on the present occasion of a trust, condition, or other possession, as one of which it may happen that a man ought or ought not to have had possession given him by the law, for, the plan here set out upon is to give such a view all along of the laws that are proposed, as shall be taken from the reasons which there are for making them: the reason then it would seem should subsist before the law: not the law before the reason. Nor is this to be denied: for, unquestionably, upon the principle of utility, it may be said with equal truth of those operations by which a trust, or any other article of property, is instituted, as of any other operations of the law, that it never can be expedient they should be performed, unless some reason for performing them, deduced from that principle, can be assigned. To give property to one man, you must impose obligation on another: you must oblige him to do something which he may have a mind not to do, or to abstain from doing something which he may have a mind to do: in a word, you must in some way or other expose him to inconvenience. Every such law, therefore, must at any rate be mischievous in the first instance; and if no good effects can be produced to set against the bad, it must be mischievous upon the whole. Some reasons, therefore, in this case, as in every other, there ought to be. The truth is, that in the case before us, the reasons are of too various and complicated a nature to be brought to view in an analytical outline like the present. Where the

offence is of the number of those by which *person* or *reputation* are affected, the reasons for prohibiting it lie on the surface, and apply to every man alike. But *property*, before it can be offended against, must be created, and at the instant of its creation distributed, as it were, into parcels of different sorts and sizes, which require to be assigned, some to one man and some to another, for reasons, of which may lie a little out of sight, and which being different in different cases, would take up more room than could consistently be allotted to them here. For the present purpose, it is sufficient if it appear, that for the carrying on of the several purposes of life, there are trusts, and conditions, and other articles of property, which must be possessed by somebody: and that it is not every article that can, nor every article that ought, to be possessed by every body. What articles ought to be created, and to what persons, and in what cases they ought to be respectively assigned, are questions which cannot be settled here. Nor is there any reason for wishing that they could, since the settling them one way or another is what would make no difference in the nature of any offence whereby any party may be exposed, on the occasion of any such institution, to sustain a detriment.

[246] In the former case, it may be observed, the act is of the negative kind: in the latter, it will commonly be of the positive kind.

As to the expression *non-investment of trust*, I am sensible that it is not perfectly consonant to the idiom of the language: the usage is to speak of a person as being invested (that is clothed) with a trust, not of a trust as of a thing that is itself *invested* or *put on*. The phrase at length would be, *the non-investment of a person with a trust:* but this phrase is by much too long-winded to answer the purpose of an appellative. I saw, therefore, no other resource than to venture upon the ellipsis here employed. The ancient lawyers, in the construction of their appellatives, have indulged themselves in much harsher ellipsises without scruple. See above, xxv. note. It is already the usage to speak of a trust as a thing that *vests*, and as a thing that may be *divested*.

[247] I do not find that this word has yet been received into

the English language. In the Latin, however, it is very expressive, and is used in a sense exactly suitable to the sense here given to it. *Militiam detrectare*, to endeavour to avoid serving in the army, is a phrase not unfrequently met with in the Roman writers.

[248] What is here meant by abuse of trust, is the exercise of a power usurped over strangers, under favour of the powers properly belonging to the trust. The distinction between what is here meant by breach of trust, and what is here meant by abuse of trust, is not very steadily observed in common speech: and in regard to public trusts, it will even in many cases be imperceptible. The two offences are, however, in themselves perfectly distinct: since the persons, by whom the prejudice is suffered, are in many cases altogether different. It may be observed, perhaps, that with regard to abuse of trust, there is but one species here mentioned; viz. that which corresponds to positive breach of trust: none being mentioned as corresponding to negative breach of trust. The reason of this distinction will presently appear. In favour of the parties, for whose benefit the trust was created, the trustee is bound to act; and therefore merely by his doing nothing they may receive a prejudice: but in favour of other persons at large he is not bound to act: and therefore it is only from some positive act on his part that any prejudice can ensue to them.

[249] See infra, liv. note; and ch. xviii. [Indirect Legislation].

[250] See ch. xi. [Dispositions], xxix.

[251] To bribe a trustee, as such, is in fact neither more nor less than to *suborn* him to be guilty of a breach or an abuse of trust. Now subornation is of the number of those *accessory* offences which every principal offence, one as well as another, is liable to be attended with. See infra, xxxi. note; and B. I. tit. [Accessory offences]. This particular species of subornation however being one that, besides its having a specific name framed to express it, is apt to engage a peculiar share of attention, and to present itself to view in company with other offences against trust, it would have seemed an omission not to have included it in that catalogue.

[252] See ch. vi. [Sensibility] ii.

[253] In the enumeration of these genera, it is all along to be

observed, that offences of an accessory nature are not mentioned; unless it be here and there where they have obtained current names which seemed too much in vogue to be omitted. Accessory offences are those which, without being the very acts from which the mischief in question takes its immediate rise, are, in the way of causality, connected with those acts. See ch. vii. [Actions] xxiv. and B. I. tit. [Accessory offences].

[254] Ch. vii. [Actions] viii.

[255] Of these, and the several other leading expressions which there is occasion to bring to view in the remaining part of this analysis, ample definitions will be found in the body of the work, conceived in *terminis legis*. To give particular references to these definitions, would be encumbering the page to little purpose.

[256] Injurious restrainment at large, and injurious compulsion at large, are here styled *simple*, in order to distinguish them from confinement, banishment, robbery, and extortion; all which are, in many cases, but so many modifications of one or other of the two first-mentioned offences.

To constitute an offence an act of simple injurious restrainment, or simple injurious compulsion, it is sufficient if the influence it exerts be, in the first place, pernicious; in the next place, exerted on the person by the medium of the will: it is not necessary that that part of the person on which it is exerted be the part to which it is pernicious: it is not even necessary that it should immediately be pernicious to either of these parts, though to one or other of them it must be pernicious in the long-run, if it be pernicious at all. An act in which the body, for example, is concerned, may be very disagreeable, and thereby pernicious to him who performs it, though neither disagreeable nor pernicious to his body: for instance, to stand or sit in public with a label on his back, or under any other circumstances of ignominy.

[257] It may be observed, that wrongful menacement is included as well in simple injurious restrainment as in simple injurious compulsion, except in the rare case where the motives by which one man is prevented by another from doing a thing that would have been materially to his advantage, or

induced to do a thing that is materially to his prejudice, are of the *alluring* kind.

[258] Although, for reasons that have been already given (supra xxxi), no complete catalogue, nor therefore any exhaustive view, of either semi-public or self-regarding offences, can be exhibited in this chapter, it may be a satisfaction, however, to the reader, to see some sort of list of them, if it were only for the sake of having examples before his eyes. Such lists cannot any where be placed to more advantage than under the heads of the several divisions of private extra-regarding offences, to which the semi-public and self-regarding offences in question respectively correspond. Concerning the two latter, however, and the last more particularly, it must be understood that all I mean by inserting them here, is to exhibit the mischief, if any, which it is of the nature of them respectively to produce, without deciding upon the question, whether it would be *worth while* [see ch. xiii. Cases unmeet] in every instance, for the sake of combating that mischief, to introduce the evil of punishment. In the course of this detail, it will be observed, that there are several heads of extra-regarding private offences, to which the correspondent heads, either of semi-public or self-regarding offences, or of both, are wanting. The reasons of these deficiencies will probably, in most instances, be evident enough upon the face of them. Lest they should not, they are however specified in the body of the work. They would take up too much room were they to be inserted here.

I. SEMI-PUBLIC OFFENCES through calamity. Calamities, by which the persons or properties of men, or both, are liable to be affected, seem to be as follows: 1. Pestilence or contagion. 2. Famine, and other kinds of scarcity. 3. Mischiefs producible by persons deficient in point of understanding, such as infants, idiots, and maniacs, for want of their being properly taken care of. 4. Mischief producible by the ravages of noxious animals, such as beasts of prey, locusts, &c. &c. 5. Collapsion, or fall of large masses of solid matter, such as decayed buildings, or rocks, or masses of snow. 6. Inundation or submersion. 7. Tempest. 8. Blight. 9. Conflagration. 10. Explosion. In as far as a man may contribute, by any imprudent act of

his, to give birth to any of the above calamities, such act may be an offence. In as far as a man may fail to do what is incumbent on him to do towards preventing them, such failure may be an offence.

II. SEMI-PUBLIC OFFENCES of mere delinquency. A whole neighbourhood may be made to suffer, 1. Simple corporal injuries: in other words, they may be made to suffer in point of health, by offensive or dangerous trades or manufactures: by selling or falsely puffing off unwholesome medicines or provisions: by poisoning or drying up of springs, destroying of aqueducts, destroying woods, walls, or other fences against wind and rain: by any kinds of artificial scarcity; or by any other calamities intentionally produced. 2. and 3. Simple injurious restrainment, and simple injurious compulsion: for instance, by obliging a whole neighbourhood, by dint of threatening hand-bills, or threatening discourses, publicly delivered, to join, or forbear to join, in illuminations, acclamations, outcries, invectives, subscriptions, undertakings, processions, or any other mode of expressing joy or grief, displeasure or approbation; or, in short, in any other course of conduct whatsoever. 4. and 5. Confinement and banishment: by the spoiling of roads, bridges, or ferry-boats: by destroying or unwarrantably pre-occupying public carriages, or houses of accommodation. 6. By menacement: as by incendiary letters, and tumultuous assemblies: by newspapers or hand-bills, denouncing vengeance against persons of particular denominations: for example, against Jews, Catholics, Protestants, Scotchmen, Gascons, Catalonians, &c. 7. Simple mental injuries: as by distressful, terrifying, obscene, or irreligious exhibitions; such as exposure of sores by beggars, exposure of dead bodies, exhibitions or reports of counterfeit witchcrafts or apparitions, exhibition of obscene or blasphemous prints: obscene or blasphemous discourses held in public: spreading false news of public defeats in battle, or of other misfortunes.

III. Self-regarding offences against person. 1. Fasting. Abstinence from venery, self-flagellation, self-mutilation, and other self-denying and self-tormenting practices. 2. Gluttony, drunkenness, excessive venery, and other species of intemperance. 3. Suicide.

[259] I. SEMI-PUBLIC OFFENCES. 1. Calumniation and vilification of particular denominations of persons; such as Jews, Catholics, &c.

II. SELF-REGARDING OFFENCES. 1. Incontinence in females. 2. Incest.

[260] Supra xxvii.

[261] Ib.

[262] See ch. ix. [Consciousness] ii.

[263] *Payment, what.* The light in which the offence of insolvency is here exhibited, may perhaps at first consideration be apt to appear not only novel but improper. It may naturally enough appear, that when a man owes you a sum of money, for instance, the right to the money is yours already, and that what he withholds from you by not paying you, is not the legal title to it, possession of it, or power over it, but the physical possession of it, or power over it, only. But upon a more accurate examination this will be found not to be the case. What is meant by payment, is always an act of investitive power, as above explained; an expression of an act of the will, and not a physical act: it is an act exercised *with relation* indeed to the thing said to be *paid*, but not in a physical sense exercised *upon* it. A man who owes you ten pounds, takes up a handful of silver to that amount, and lays it down on a table at which you are sitting. If then by words, or gestures, or any means whatever, addressing himself to you, he intimates it to be his will that you should take up the money, and do with it as you please, he is said to have *paid* you: but if the case was, that he laid it down not for that purpose, but for some other, for instance, to count it and examine it, meaning to take it up again himself, or leave it for somebody else, he has *not* paid you: yet the physical acts, exercised upon the pieces of money in question, are in both cases the same. Till he does express a will to that purport, what you have is not, properly speaking, the legal possession of the money, or a right to the money, but only a right to have him, or in his default perhaps a minister of justice, compelled to render you that sort of service, by the rendering of which he is said to pay you: that is, to express such will as above-mentioned, with regard to some corporeal article, or other of a certain species,

and of value equal to the amount of what he owes you: or, in other words, to exercise in your favour an act of investitive power with relation to some such article.

True it is, that in certain cases a man may perhaps not be deemed, according to common acceptation, to have *paid* you, without rendering you a further set of services, and those of another sort: a set of services, which are rendered by the exercising of certain acts of a physical nature upon the very thing with which he is said to pay you: to wit, by transferring the thing to a certain place where you may be sure to find it, and where it may be convenient for you to receive it. But these services, although the obligation of rendering them should be annexed by law to the obligation of rendering those other services in the performance of which the operation of payment properly consists, are plainly acts of a distinct nature: nor are they essential to the operation: by themselves they do not constitute it, and it may be performed without them. It *must* be performed without them wherever the thing to be transferred happens to be already as much within the reach, physically speaking, of the creditor, as by any act of the debtor it can be made to be.

This matter would have appeared in a clearer light had it been practicable to enter here into a full examination of the nature of property, and the several modifications of which it is susceptible: but every thing cannot be done at once.

[264] Supra xxvi.

[265] Under wrongful withholding of services is included *breach of contract*: for the obligation to render services may be grounded either on contract, or upon other titles: in other words, the event of a man's engaging in a contract is one out of many other investitive events from which the right of receiving them may take its commencement. See ch. xvii. [Limits], § iv.

Were the word *services* to be taken in its utmost latitude (negative included as well as positive) this one head would cover the whole law. To this place then are to be referred such services only, the withholding of which does not coincide with any of the other offences, for which separate denominations have been provided.

[266] In the English law, *detinue* and *detainer:* detinue applied chiefly to movables; detainer, to immovables. Under detinue and detainer cases are also comprised, in which the offence consists in forbearing to transfer the legal possession of the thing: such cases may be considered as coming under the head of wrongful non-investment. The distinction between mere physical possession and legal possession, where the latter is short-lived and defeasible, seems scarcely hitherto to have been attended to. In a multitude of instances they are confounded under the same expressions. The cause is, that probably under all laws, and frequently for very good reasons, the legal possession, with whatever certainty defeasible upon the event of a trial, is, down to the time of that event, in many cases annexed to the appearance of the physical.

[267] In attempting to exhibit the import belonging to this and other names of offences in common use, I must be understood to speak all along with the utmost diffidence. The truth is, the import given to them is commonly neither determinate nor uniform: so that in the nature of things, no definition that can be given of them by a private person can be altogether an exact one. To fix the sense of them belongs only to the legislator.

[268] The remaining cases come under the head of usurpation, or wrongful investment of property. The distinction seems hardly hitherto to have been attended to: it turns like another, mentioned above, upon the distinction between legal possession and physical. The same observation may be applied to the case of extortion hereafter following.

[269] Vide supra, xxvii.

[270] Usury, which, if it must be an offence, is an offence committed with consent, that is, with the consent of the party supposed to be injured, cannot merit a place in the catalogue of offences, unless the consent were either unfairly obtained or unfreely: in the first case, it coincides with defraudment; in the other, with extortion.

[271] I. SEMI-PUBLIC OFFENCES. 1. Wrongful divestment, interception, usurpation, &c. of valuables, which are the property of a corporate body; or which are in the indiscriminate occupation of a neighbourhood; such as parish churches, altars, rel-

ics, and other articles appropriated to the purposes of religion: or things which are in the indiscriminate occupation of the public at large; such as mile-stones, market-houses, exchanges, public gardens, and cathedrals. 2. Setting on foot what have been called *bubbles*, or fraudulent partnership, or gaming adventures; propagating false news, to raise or sink the value of stocks, or of any other denomination of property.

II. SELF-REGARDING OFFENCES. 1. Idleness. 2. Gaming. 3. Other species of prodigality.

[272] See ch. v. [Pleasures and Pains].

[273] I. SEMI-PUBLIC OFFENCES—none.

II. SELF-REGARDING OFFENCES. 1. Sacrifice of virginity. 2. Indecencies not public.

[274] Supra.

[275] In the technical language of the English law, property so acquired is said to be acquired by *duress*.

[276] Applied to movables, the circumstance of force has never, at least by the technical part of the language, been taken into account: no such combination of terms as *forcible occupation* is in current use. The word *detinue* is applied to movables only: and (in the language of the law) the word *forcible* has never been combined with it. The word applied to immovables is *detainer*: this is combined with the word *forcible*: and what is singular, it is scarcely in use without that word. It was impossible to steer altogether clear of this technical nomenclature, on account of the influence which it has on the body of the language.

[277] I. SEMI-PUBLIC OFFENCES. 1. Incendiarism. 2. Criminal inundation.

II. SELF-REGARDING OFFENCES—none.

[278] Supra, xxv. note.

[279] By the terms *connubial* and *post-connubial*, all I mean at present to bring to view is, the mere physical union, apart from the ceremonies and legal engagements that will afterwards be considered as accompanying it.

[280] *Relations—two result from every two objects.* The vague and undetermined nature of the fictitious entity, called a relation, is, on occasions like the present, apt to be productive of a good deal of confusion. A relation is either said to be

borne by one of the objects which are parties to it, to the other, or to *subsist between* them. The latter mode of phraseology is, perhaps, rather the more common. In such case the idea seems to be, that from the consideration of the two objects there results but one relation, which belongs as it were in common to them both. In some cases, this perhaps may answer the purpose very well: it will not, however, in the present case. For the present purpose it will be necessary we should conceive two relations as resulting from the two objects, and *borne*, since such is the phrase, *by* the one of them to or towards the other: one relation borne by the first object to the second: another relation borne by the second object to the first. This is necessary on two accounts: 1. Because for the relations themselves there are in many instances separate names: for example, the relations of guardianship and wardship: in which case, the speaking of them as if they were but one, may be productive of much confusion. 2. Because the two different relationships give birth to so many conditions: which conditions are so far different, that what is predicated and will hold good of the one, will, in various particulars, as we shall see, not hold good of the other.

[281] See ch. xvii. [Limits], § iii.

[282] Two persons, who by any means stand engaged to live together, can never live together long, but one of them will choose that some act or other should be done which the other will choose should not be done. When this is the case, how is the competition to be decided? Laying aside generosity and good-breeding, which are the tardy and uncertain fruits of long-established laws, it is evident that there can be no certain means of deciding it but physical power: which indeed is the very means by which family as well as other competitions must have been decided, long before any such office as that of legislator had existence. This then being the order of things which the legislator finds established by nature, how should he do better than to acquiesce in it? The persons who by the influence of causes that prevail every where, stand engaged to live together, are, 1. Parent and child, during the infancy of the latter: 2. Man and wife: 3. Children of the same parents. Parent and child, by necessity: since, if the

child did not live with the parent (or with somebody standing in the place of the parent) it could not live at all: husband and wife, by a choice approaching to necessity: children of the same parents, by the necessity of their living each of them with the parents. As between parent and child, the necessity there is of a power on the part of the parent for the preservation of the child supersedes all farther reasoning. As between man and wife, that necessity does not subsist. The only reason that applies to this case is the necessity of putting an end to competition. The man would have the meat roasted, the woman boiled: shall they both fast till the judge comes in to dress it for them? The woman would have the child dressed in green; the man, in blue: shall the child be naked till the judge comes in to clothe it? This affords a reason for giving a power to one or other of the parties: but it affords none for giving the power to the one rather than to the other. How then shall the legislator determine? Supposing it equally easy to give it to either, let him look ever so long for a reason why he should give it to the one rather than to the other, and he may look in vain. But how does the matter stand already? for there were men and wives (or, what comes to the same thing, male and female living together as man and wife) before there were legislators. Looking round him then, he finds almost every where the male the stronger of the two; and therefore possessing already, by purely physical means, that power which he is thinking of bestowing on one of them by means of law. How then can he do so well as by placing the legal power in the same hands which are beyond comparison the more likely to be in possession of the physical? in this way, few transgressions, and few calls for punishment: in the other way, perpetual transgressions, and perpetual calls for punishment. Solon is said to have transferred the same idea to the distribution of state powers. Here then was *generalization*: here was the work of genius. But in the disposal of domestic power, every legislator, without any effort of genius, has been a Solon. So much for *reasons* [Social motives: sympathy for the public: love of reputation, &c.]: add to which, in point of *motives* [Self-regarding motives: or social motives, which are social in a less

extent: sympathy for persons of a particular description: persons of the same sex.], that legislators seem all to have been of the male sex, down to the days of Catherine. I speak here of those who frame laws, not of those who touch them with a sceptre.

[283] Supra, note 282.

[284] Vide supra, xxvii.

[285] In most civilized nations there is a sort of domestic condition, in which the superior is termed a master, while the inferior is termed sometimes indeed a servant, but more particularly and more frequently an *apprentice*. In this case, though the superior is, in point of usage, known by no other name than that of a master, the relationship is in point of fact a mixed one, compounded of that of *master* and that of *guardian*.

[286] It may seem at first, that a person who is in the condition of a slave, could not have it in his power to engage in such course of proceeding as would be necessary, in order to give him an apparent title to be reckoned among the slaves of another master. But though a slave in point of *right*, it may happen that he has eloped for instance, and is not a slave in point of *fact:* or, suppose him a slave in point of fact, and ever so vigilantly guarded, still a person connected with him by the ties of sympathy, might do that for him which, though willing and assenting, he might not be able to do for himself: might forge a deed of donation, for example, from the one master to the other.

[287] Consider them *together* indeed, take the sum of the two interests, and the case, as we have seen (supra, xl), is then the reverse. That case, it is to be remembered, proceeds only upon the supposition that the two parties are obliged to live together; for suppose it to be at their option to part, the necessity of establishing the power ceases.

[288] Ch. xvii. [Limits], § i.

[289] See ch. xiii. [Cases unmeet], § iii.

[290] In certain nations, women, whether married or not, have been placed in a state of perpetual wardship: this has been evidently founded on the notion of a decided inferiority in point of intellects on the part of the female sex, analogous

to that which is the result of infancy or insanity on the part of the male. This is not the only instance in which tyranny has taken advantage of its own wrong, alleging as a reason for the domination it exercises, an imbecility, which, as far as it has been real, has been produced by the abuse of that very power which it is brought to justify. Aristotle, fascinated by the prejudice of the times, divides mankind into two distinct species, that of freemen, and that of slaves. Certain men were born to be slaves, and ought to be slaves.—Why? Because they are so.

[291] See ch. xvii. [Limits], § i.

[292] Supra, xxxv.

[293] Vide supra, xxv.

[294] Vide supra, xl.

[295] This effect it may be thought will not necessarily take place: since a ward may have two guardians. One man then is guardian by right: another man comes and makes himself so by usurpation. This may very well be, and yet the former may continue guardian notwithstanding. How then (it may be asked) is he divested of his guardianship?—The answer is —Certainly not of the whole of it: but, however, of a part of it: of such part as is occupied, if one may so say, that is, of such part of the powers and rights belonging to it as are exercised, by the usurper.

[296] At first view it may seem a solecism to speak of the condition of parentality as one which a man can have need to be invested with. The reason is, that it is not common for any ceremony to be required as necessary to a man's being deemed in law the father of such or such a child. But the institution of such a ceremony, whether advisable or not, is at least perfectly conceivable. Nor are there wanting cases in which it has actually been exemplified. By an article in the Roman law, adopted by many modern nations, an illegitimate child is rendered legitimate by the subsequent marriage of his parents. If then a priest, or other person whose office it was, were to refuse to join a man and woman in matrimony, such refusal, besides being a wrongful non-investment with respect to the two matrimonial conditions, would be a wrongful non-

investment of parentality and filiation, to the prejudice of any children who should have been legitimated.

[297] In English we have no word that will serve to express with propriety the person who bears the relation opposed to that of parent. The word *child* is ambiguous, being employed in another sense, perhaps more frequently than in this: more frequently in opposition to *a person of full age*, an *adult*, than in correlation to a *parent*. For the condition itself we have no other word than *filiation:* an ill-contrived term, not analogous to *paternity* and *maternity:* the proper term would have been *filiality:* the word filiation is as frequently, perhaps, and more consistently, put for the act of establishing a person in the possession of the condition of filiality.

[298] Supra, xl. note.

[299] See ch. xvii. [Limits], § iv.

[300] In this case also, if the woman knew not of the prior marriage, it is besides a species of seduction; and, in as far as it affects her, belongs to another division of the offences of this class. Vide supra, xxxvi.

[301] I. SEMI-PUBLIC offences.—Falsehoods contesting, or offences against justice destroying, the validity of the marriages of people of certain descriptions: such as Jews, Quakers, Hugonots, &c. &c.

II. SELF-REGARDING offences.—Improvident marriage on the part of minors.

[302] In pursuance of the plan adopted with relation to semi-public and self-regarding offences, it may here be proper to exhibit such a catalogue as the nature of the design will admit, of the several genera or inferior divisions of public offences.

I. OFFENCES against the EXTERNAL SECURITY of the state. 1. Treason (in favour of foreign enemies). It may be positive or negative (negative consisting, for example, in the not opposing the commission of positive). 2. *Espionage* (in favour of foreign rivals not yet enemies). 3. Injuries to foreigners at large (including piracy). 4. Injuries to privileged foreigners (such as ambassadors).

II. OFFENCES AGAINST JUSTICE. Offences against judicial

trust: viz. Wrongful non-investment of judicial trust, wrongful interception of judicial trust, wrongful divestment of judicial trust, usurpation of judicial trust, wrongful investment of judicial trust, wrongful abdication of judicial trust, wrongful detrectation of judicial trust, wrongful imposition of judicial trust, breach of judicial trust, abuse of judicial trust, disturbance of judicial trust, and bribery in prejudice of judicial trust.

Breach and abuse of judicial trust may be either intentional or unintentional. Intentional is culpable at any rate. Unintentional will proceed either from inadvertence, or from mis-supposal: if the inadvertence be coupled with heedlessness, or the mis-supposal with rashness, it is culpable: if not, blameless. For the particular acts by which the exercise of judicial trust may be *disturbed* see B. i. tit. [Offences against justice]. They are too multifarious, and too ill provided with names, to be exhibited here.

If a man fails in fulfilling the duties of this trust, and thereby comes either to break or to abuse it, it must be through some deficiency in the three requisite and only requisite endowments, of knowledge, inclination, and power. [See supra, xxvii.] A deficiency in any of those points, if any person be in fault, may proceed either from his own fault, or from the fault of those who should act with or under him. If persons who are in fault are persons invested with judicial trust, the offence comes under the head of breach or abuse of trust: if other persons, under that of disturbance of trust.

The ill effects of any breach, abuse, or disturbance of judicial trust, will consist in the production of some article or articles in the list of the mischiefs which it ought to be the original purpose of judicial procedure to remedy or avert, and of those which it ought to be the incidental purpose of it to avoid producing. These are either primary (that is immediate) or remote: remote are of the 2nd, 3rd, or 4th order, and so on. The primary are those which import actual pain to persons assignable, and are therefore mischievous in themselves: the secondary are mischievous on account of the tendency they have to produce some article or articles in the catalogue of those of the first order; and are therefore mischievous in

their effects. Those of the 3rd order are mischievous only on account of the connection they have in the way of productive tendency, as before, with those of the 2nd order: and so on.

Primary inconveniences, which it ought to be the object of procedure to provide against, are, 1. The continuance of the individual offence itself, and thereby the increase as well as continuance of the mischief of it. 2. The continuance of the whole mischief of the individual offence. 3. The continuance of a part of the mischief of the individual offence. 4. Total want of amends on the part of persons injured by the offence. 5. Partial want of amends on the part of persons injured by the offence. 6. Superfluous punishment of delinquents. 7. Unjust punishment of persons accused. 8. Unnecessary labour, expense, or other suffering or danger, on the part of superior judicial officers. 9. Unnecessary labour, expense, or other suffering or danger, on the part of ministerial or other subordinate judicial officers. 10. Unnecessary labour, expense, or other suffering or danger, on the part of persons whose co-operation is requisite *pro re natâ*, in order to make up the necessary complement of knowledge and power on the part of judicial officers, who are such by profession. 11. Unnecessary labour, expense, or other suffering or danger, on the part of persons at large, coming under the sphere of the operations of the persons above-mentioned.

Secondary inconveniences are, in the consultative, pre-interpretative (or purely civil) branch of procedure, 1. Misinterpretation or adjudication. In the executive (including the penal) branch. 2. Total impunity of delinquents: (as favouring the production of other offences of the like nature). 3. Partial impunity of delinquents. 4. Application of punishment improper in specie, though perhaps not in degree (this lessening the beneficial efficacy of the quantity employed). 5. Uneconomical application of punishment, though proper, perhaps, as well in specie as in degree. 6. Unnecessary pecuniary expense on the part of the state.

Inconveniences of the 3rd order are, 1. Unnecessary delay. 2. Unnecessary intricacy.

Inconveniences of the 4th order are, 1. Breach, 2. Abuse, 3. Disturbance, of judicial trust, as above: viz. in as far as

these offences are preliminary to and distinct from those of the 2nd and 3rd orders.

Inconveniences of the 5th order are, Breach of the several regulations of procedure, or other regulations, made in the view of obviating the inconveniences above enumerated: viz. if preliminary and distinct, as before.

III. OFFENCES against the PREVENTIVE branch of the POLICE. 1. Offences against *phthano-paranomic* trust: (*phthanō*, to prevent; *paranomia*, an offence). 2. Offences against *phthano-symphoric* trust: (*symphora*, a calamity). The two trusts may be termed by the common appellation of *prophylactic*: (*pro*, beforehand, and *phylattō*, to guard against).

IV. OFFENCES against the PUBLIC FORCE. 1. Offences against military trust, corresponding to those against judicial trust. Military desertion is a breach of military duty, or of military trust. Favouring desertion is a disturbance of it. 2. Offences against that branch of public trust which consists in the management of the several sorts of things appropriated to the purposes of war: such as arsenals, fortifications, dockyards, ships of war, artillery, ammunition, military magazines, and so forth. It might be termed *polemo-tamieutic*: from *polemos*, war; and *tamieus*, a steward.†

V. OFFENCES against the POSITIVE INCREASE of the NATIONAL FELICITY. 1. Offences against *epistemo-threptic* trust: (*epistēmē*, knowledge; and *trephō*, to nourish or promote). 2. Offences against *eupædagogic* trust: (*eu*, well; and *paidagōgeō*, to educate). 3. Offences against *noso-comial* trust: (*nosos*, a disease; and *komizō*, to take care of). 4. Offences against *moro-comial* trust: (*moros*, an insane person). 5. Offences against *ptocho-comial* trust: (*ptōchoi*, the poor). 6. Offences against *antembletic* trust: (*antemballō*, to bestow in reparation of a loss). 7. Offences against *hedonarchic* trust: (*hēdonai*, pleasures; and *archomai*, to preside over). The above are examples of the principal establishments which should or might be set on foot for the purpose of making, in so many different ways, a positive addition to the stock of national felicity. To exhibit an exhaustive analysis of the possible total of these establishments would not be a very easy

task: nor on the present occasion is it a necessary one: for be they of what nature and in what number they may, the offences to which they stand exposed will, in as far as they are offences against trust, be in point of denomination the same: and as to what turns upon the particular nature of each trust, they will be of too local a nature to come within the present plan.

All these trusts might be comprised under some such general name as that of *agatho-poieutic* trust: (*agathopoieō*, to do good to any one).

VI. OFFENCES against the PUBLIC WEALTH. 1. Non-payment of forfeitures. 2. Non-payment of taxes, including smuggling. 3. Breach of the several regulations made to prevent the evasion of taxes. 4. Offences against fiscal trust: the same as offences against judicial and military trusts. Offences against the original revenue, not accruing either from taxes or forfeitures, such as that arising from the public demesnes, stand upon the same footing as offences against private property. 5. Offences against *demosio-tamieutic* trust: (*dēmosia*, things belonging to the public; and *tamieus*, a steward) viz. against that trust, of which the object is to apply to their several destinations such articles of the public wealth as are provided for the indiscriminate accommodation of individuals: such as public roads and waters, public harbours, post-offices, and packet boats, and the stock belonging to them; market-places, and other such public buildings; race-grounds, public walks, and so forth. Offences of this description will be apt to coincide with offences against *agatho-poieutic* trust as above, or with offences against *ethno-plutistic* trust hereafter mentioned, according as the benefit in question is considered in itself, or as resulting from the application of such or such a branch or portion of the public wealth.

VII. OFFENCES against POPULATION. 1. Emigration. 2. Suicide. 3. Procurement of impotence or barrenness. 4. Abortion. 5. Unprolific coition. 6. Celibacy.

VIII. OFFENCES against the NATIONAL WEALTH. 1. Idleness. 2. Breach of the regulations made in the view of preventing the application of industry to purposes less profitable, in

prejudice of purposes more profitable. 3. Offences against *ethno-plutistic* trust: (*ethnos*, the nation at large; *ploutizō*, to enrich).

IX. OFFENCES against the SOVEREIGNTY. 1. Offences against sovereign trust: corresponding to those against judicial, prophylactic, military, and fiscal trusts. Offensive rebellion includes wrongful interception, wrongful divestment, usurpation, and wrongful investment, of sovereign trust, with the offences accessory thereto. Where the trust is in a single person, wrongful interception, wrongful divestment, usurpation, and wrongful investment cannot, any of them, be committed without rebellion: abdication and detrectation can never be deemed wrongful: breach and abuse of sovereign trust can scarcely be punished: no more can bribe-taking: wrongful imposition of it is scarce practicable. When the sovereignty is shared among a number, wrongful interception, wrongful divestment, usurpation, and wrongful investment, may be committed without rebellion: none of the offences against this trust are impracticable: nor is there any of them but might be punished. Defensive rebellion is disturbance of this trust. Political tumults, political defamation, and political vilification, are offences accessory to such disturbance.

Sovereign power (which, upon the principle of utility, can never be other than fiduciary) is exercised either by rule or without rule: in the latter case it may be termed *autocratic*: in the former case it is divided into two branches, the *legislative* and the *executive* [See ch. xvii. [Limits], § iii.]. In either case, where the designation of the person by whom the power is to be possessed, depends not solely upon mere physical events, such as that of natural succession, but in any sort upon the will of another person, the latter possesses an *investitive* power, or right of investiture, with regard to the power in question: in like manner may any person also possess a *divestive* power. The powers above enumerated, such as judicial power, military power, and so forth, may therefore be exercisable by a man, either directly, *propriâ manu*; or indirectly, *manu alienâ* [In the former case, the power might be termed in one word, *autochirous*: in the latter *heterochirous*. (*autos*, a man's own; *cheir*, a hand; *heteros*, another's).].

Power to be exercised *manu aliená* is investitive, which may or may not be accompanied by divestitive. Of sovereign power, whether autocratic, legislative, or executive, the several public trusts above mentioned form so many subordinate branches. Any of these powers may be placed, either, 1. in an individual; or, 2. in a body politic: who may be either supreme or subordinate. Subordination on the part of a magistrate may be established, 1. By the person's being punishable: 2. By his being removable: 3. By the orders being reversible.

X. Offences against religion. 1. Offences tending to weaken the force of the religious sanction: including blasphemy and profaneness. 2. Offences tending to misapply the force of the religious sanction: including false prophecies, and other pretended revelations; also heresy, where the doctrine broached is pernicious to the temporal interests of the community. 3. Offences against religious trust, where any such is thought fit to be established.

XI. Offences against the national interest in general. 1. Immoral publications. 2. Offences against the trust of an ambassador; or, as it might be termed, *presbeutic* trust. 3. Offences against the trust of a privy-counsellor; or, as it might be termed, *symbouleutic* trust. 4. In pure or mixed monarchies, prodigality on the part of persons who are about the person of the sovereign, though without being invested with any specific trust. 5. Excessive gaming on the part of the same persons. 6. Taking presents from rival powers without leave.

† A number of different branches of public trust, none of which have yet been provided with appellatives, have here been brought to view: which then were best? to coin new names for them out of the Greek; or, instead of a word to make use of a whole sentence? In English, and in French, there is no other alternative; no more than in any of the other southern languages. It rests with the reader to determine.

[303] Supra, xvii.

[304] See ch. vii. [Actions] viii.

[305] The reason probably why an object of the sort here in question is referred to the head of property, is, that the chief

value of it arises from its being capable of being made a source of property in the more ordinary acceptations of the word; that is, of money, consumable commodities, and so forth.

[306] The conditions themselves having nothing that corresponds to them in England, it was necessary to make use of foreign terms.

[307] The above hints are offered to the consideration of the few who may be disposed to bend their minds to disquisitions of this uninviting nature: to sift the matter to the bottom, and engage in the details of illustration, would require more room than could in this place be consistently allowed.

[308] See Fragment on Government, pref. p. xlv. edit. 1776. —pref. p. xlvii. edit. 1823.

[309] Imagine what a condition a science must be in, when as yet there shall be no such thing as forming any extensive proposition relative to it, that shall be at the same time a true one: where, if the proposition shall be true of some of the particulars contained under it, it shall be false with regard to others. What a state would botany, for example, be in, if the classes were so contrived, that no common characters could be found for them? Yet in this state, and no better, seems every system of penal law to be, authoritative or unauthoritative, that has ever yet appeared. Try if it be otherwise, for instance, with the *delicta privata et publica*, and with the *publica ordinaria*, and *publica extra-ordinaria* of the Roman law [See Heinecc, Elem. p. vii. § 79, 80.]. All this for want of method: and hence the necessity of endeavouring to strike out a new one.

Nor is this want of method to be wondered at. A science so new as that of penal legislation, could hardly have been in any better state. Till objects are distinguished, they cannot be arranged. It is thus that *truth* and *order* go on hand in hand. It is only in proportion as the former is discovered, that the latter can be improved. Before a certain order is established, truth can be but imperfectly announced: but until a certain proportion of truth has been developed and brought to light, that order cannot be established. The discovery of truth leads

to the establishment of order: and the establishment of order fixes and propagates the discovery of truth.

310 Supra, lviii.

311 Ch. vii. [Actions] xiv.

312 See ch. xii. [Consequences] iii.

313 That is, by their primary mischief.

314 See supra, xxxi note, and B. I. tit. [Accessory offences].

315 See ch. xiii. [Cases unmeet] ii. note.

316 I mean, that retaliation is *capable* of being applied in the cases in question; not that it *ought* always to be employed. Nor is it capable of being applied in every *individual* instance of each offence, but only in some individual instance of each *species* of offence.

317 See ch. xv. [Properties] viii.

318 Ch. ii. [Principles adverse].

319 It seems to be from their possessing these three last properties, that the custom has arisen of speaking of them, or at least of many of them, under the name of offences against the *law of nature*: a vague expression, and productive of a multitude of inconveniences. See ch. ii. [Principles adverse] xiv. note.

320 Because the person, who in general is most likely to be sensible to the mischief (if there is any) of any offence, viz. the person whom it most affects, shows by his conduct that he is not sensible of it.

321 See ch. vi. [Sensibility] xxv. xxvi.

322 See ch. xii. [Consequences] iv.

323 Among the offences, however, which belong to this class there are some which in certain countries it is not uncommon for persons to be disposed to prosecute without any artificial inducement, and merely on account of an *antipathy*, which such acts are apt to excite. See ch. ii. [Principles adverse] xi.

324 See note 320.

325 Accordingly, most of them are apt to be ranked among offences against the law of nature. Vide supra, Characters of the 1st class, lxii. note.

326 I mean the considerations, right or wrong, which induce

or dispose the legislator to treat them on the footing of offences.

[327] Instance, offences by falsehood, in the case of *defraudment*.

[328] Instance, offences by falsehood, in the case of simple corporal injuries, and other offences against person.

CHAPTER XVII.

[329] And the *constitutional* branch, what is become of it? Such is the question which many a reader will be apt to put. An answer that might be given is—that the matter of it might without much violence be distributed under the two other heads. But, as far as recollection serves, that branch, notwithstanding its importance, and its capacity of being lodged separately from the other matter, had at that time scarcely presented itself to my view in the character of a distinct one: the thread of my enquiries had not as yet reached it. But in the concluding note of this same chapter, in paragraphs xxii. to the end, the omission may be seen in some measure supplied.

[330] *Interests of the inferior animals improperly neglected in legislation.* Under the Gentoo and Mahometan religions, the interests of the rest of the animal creation seem to have met with some attention. Why have they not, universally, with as much as those of human creatures, allowance made for the difference in point of sensibility? Because the laws that are have been the work of mutual fear; a sentiment which the less rational animals have not had the same means as man has of turning to account. Why *ought* they not? No reason can be given. If the being eaten were all, there is very good reason why we should be suffered to eat such of them as we like to eat: we are the better for it, and they are never the worse. They have none of those long-protracted anticipations of future misery which we have. The death they suffer in our hands commonly is, and always may be, a speedier, and by that means a less painful one, than that which would await them in the inevitable course of nature. If the being killed were all, there is very good reason why we should be suffered to kill such as molest us: we should be the worse for their liv-

ing, and they are never the worse for being dead. But is there any reason why we should be suffered to torment them? Not any that I can see. Are there any why we should *not* be suffered to torment them? Yes, several. See B. I. tit. [Cruelty to animals]. The day has been, I grieve to say in many places it is not yet past, in which the greater part of the species, under the denomination of slaves, have been treated by the law exactly upon the same footing as, in England for example, the inferior races of animals are still. The day *may* come, when the rest of the animal creation may acquire those rights which never could have been withholden from them but by the hand of tyranny. The French have already discovered that the blackness of the skin is no reason why a human being should be abandoned without redress to the caprice of a tormentor [See Lewis XIVth's Code Noir.]. It may come one day to be recognized, that the number of the legs, the villosity of the skin, or the termination of the *os sacrum*, are reasons equally insufficient for abandoning a sensitive being to the same fate. What else is it that should trace the insuperable line? Is it the faculty of reason, or, perhaps, the faculty of discourse? But a full-grown horse or dog is beyond comparison a more rational, as well as a more conversable animal, than an infant of a day, or a week, or even a month, old. But suppose the case were otherwise, what would it avail? the question is not, Can they *reason?* nor, Can they *talk?* but, Can they *suffer?*

[331] Ch. vi. [Sensibility] iii.

[332] I say nothing in this place of reward: because it is only in a few extraordinary cases that it can be applied, and because even where it is applied, it may be doubted perhaps whether the application of it can, properly speaking, be termed an act of legislation. See infra, § 3.

[333] Ch. xiii. [Cases unmeet].

[334] See ch. xiii. [Cases unmeet], § iv.

[335] Ch. xiv. [Proportion] xviii. Rule 7.

[336] Ch. xiii. [Cases unmeet] § iii. Append. tit. [Promulgation].

[337] Ch. xi. [Disposition] xxxv. &c.

[338] Ch. vi. [Sensibility].

[339] In certain countries, in which the voice of the people

has a more especial control over the hand of the legislator, nothing can exceed the dread which they are under of seeing any effectual provision made against the offences which come under the head of *defamation*, particularly that branch of it which may be styled the *political*. This dread seems to depend partly upon the apprehension they may think it prudent to entertain of a defect in point of ability or integrity on the part of the legislator, partly upon a similar apprehension of a defect in point of integrity on the part of the judge.

[840] See ch. ix. [Consciousness].

[841] Ch. xvi. [Division] lii.

On occasions like this the legislator should never lose sight of the well-known story of the oculist and the sot. A countryman who had hurt his eyes by drinking, went to a celebrated oculist for advice. He found him at table, with a glass of wine before him. 'You must leave off drinking,' said the oculist. 'How so?' says the countryman. '*You* don't, and yet methinks your own eyes are none of the best.'—'That's very true, friend,' replied the oculist: 'but you are to know, I love my bottle better than my eyes.'

[842] Evil of apprehension: third branch of the evil of a punishment. Ch. xiii. § iv.

[843] Derivative evils: fourth branch of the evil of a punishment. Ib.

[844] I do not mean but that other motives of a less social nature might have introduced themselves, and probably, in point of fact, did introduce themselves, in the progress of the enterprise. But in point of possibility, the motive above mentioned, when accompanied with such a thread of reasoning, is sufficient, without any other, to account for all the effects above alluded to. If any others interfere, their interference, how natural soever, may be looked upon as an accidental and inessential circumstance, not necessary to the production of the effect. Sympathy, a concern for the danger they appear to be exposed to, gives birth to the wish of freeing them from it: that wish shows itself in the shape of a command: this command produces disobedience: disobedience on the one part produces disappointment on the other: the pain of disappointment produces ill-will towards those who are the

authors of it. The affections will often make this progress in less time than it would take to describe it. The sentiment of wounded pride, and other modifications of the love of reputation and the love of power, add fuel to the flame. A kind of revenge exasperates the severities of coercive policy.

[345] See B. I. tit. [Self-regarding offences.]

[346] But suppose the dictates of legislation *are* not what they *ought to be:* what are then, or (what in this case comes to the same thing) what ought to be, the dictates of private ethics? Do they coincide with the dictates of legislation, or do they oppose them, or do they remain neuter? a very interesting question this, but one that belongs not to the present subject. It belongs exclusively to that of private ethics. Principles which may lead to the solution of it may be seen in A Fragment on Government, p. 150, Lond. edit. 1776—and p. 114, edit. 1823.

[347] If we may believe M. Voltaire [Quest. sur l'Encyclop. tom. 7. art. Impuissance.], there was a time when the French ladies who thought themselves neglected by their husbands, used to petition *pourétre embesoignèes:* the technical word, which, he says, was appropriated to this purpose. This sort of law-proceedings seems not very well calculated to answer the design: accordingly we hear nothing of them now-a-days. The French ladies of the present age seem to be under no such difficulties.

[348] A woman's head-dress catches fire: water is at hand: a man, instead of assisting to quench the fire, looks on, and laughs at it. A drunken man, falling with his face downwards into a puddle, is in danger of suffocation: lifting his head a little on one side would save him: another man sees this and lets him lie. A quantity of gunpowder lies scattered about a room: a man is going into it with a lighted candle: another, knowing this, lets him go in without warning. Who is there that in any of these cases would think punishment misapplied?

[349] The word *law* itself, which stands so much in need of a definition, must wait for it awhile (see § 3): for there is no doing every thing at once. In the mean time every reader will understand it according to the notion he has been accustomed to annex to it.

[850] In most of the European languages there are two different words for distinguishing the abstract and the concrete senses of the word *law*: which words are so wide asunder as not even to have any etymological affinity. In Latin, for example, there is *lex* for the concrete sense, *jus* for the abstract: in Italian, *legge* and *diritto:* in French, *loi* and *droit:* in Spanish, *ley* and *derecho*: in German, *gesetz* and *recht*. The English is at present destitute of this advantage.

In the Anglo-Saxon, besides *lage*, and several other words, for the concrete sense, there was the word *right*, answering to the German *recht*, for the abstract as may be seen in the compound *folc-right*, and in other instances. But the word *right* having long ago lost this sense, the modern English no longer possesses this advantage.

[851] The word *international*, it must be acknowledged, is a new one; though, it is hoped, sufficiently analogous and intelligible. It is calculated to express, in a more significant way, the branch of law which goes commonly under the name of the *law of nations:* an appellation so uncharacteristic, that, were it not for the force of custom, it would seem rather to refer to internal jurisprudence. The chancellor D'Aguesseau has already made, I find, a similar remark: he says that what is commonly called *droit* des *gens*, ought rather to be termed *droit* entre *les gens* [Œuvres, Tom. ii. p. 337, edit. 1773, 12 no.].

[852] In the times of James I. of England and Philip III. of Spain, certain merchants at London happened to have a claim upon Philip, which his ambassador Gondemar did not think fit to satisfy. They applied for counsel to Selden, who advised them to sue the Spanish monarch in the court of King's Bench, and prosecute him to an outlawry. They did so: and the sheriffs of London were accordingly commanded, in the usual form, to take the body of the defendant Philip, wherever it was to be found within their bailiwick. As to the sheriffs, Philip, we may believe, was in no great fear of them: but, what answered the same purpose, he happened on his part to have demands upon some other merchants, whom, so long as the outlawry remained in force, there was no proceeding against. Gondemar paid the money [Selden's Table-

Talk, tit. Law.]. This was internal jurisprudence: if the dispute had been betwixt Philip and James himself, it would have been international.

As to the word *international*, from this work, or the first of the works edited in French by Mr. Dumont, it has taken root in the language. Witness reviews and newspapers.

[353] The term *municipal* seemed to answer the purpose very well, till it was taken by an English author of the first eminence to signify internal law in general, in contradistinction to international law, and the imaginary law of nature. It might still be used in this sense, without scruple, in any other language.

[354] Of what stamp are the works of Grotius, Puffendorf, and Burlamaqui? Are they political or ethical, historical or juridical, expository or censorial?—Sometimes one thing, sometimes another: they seem hardly to have settled the matter with themselves. A defect this to which all books must almost unavoidably be liable, which take for their subject the pretended *law of nature*; an obscure phantom, which, in the imaginations of those who go in chase of it, points sometimes to *manners*, sometimes to *laws*; sometimes to what law *is*, sometimes to what it *ought* to be [See Chap. II. [Principles Adverse] xiv.]. Montesquieu sets out upon the censorial plan: but long before the conclusion, as if he had forgot his first design, he throws off the censor, and puts on the antiquarian. The Marquis Beccaria's book, the first of any account that is uniformly censorial, concludes as it sets out, with penal jurisprudence.

[355] *Occasion and purpose of this concluding note.* Here ends the original work, in the state into which it was brought in November, 1780. What follows is now added in January, 1789.

The third, fourth, and fifth sections intended, as expressed in the text, to have been added to this chapter, will not here, nor now be given; because to give them in a manner tolerably complete and satisfactory, might require a considerable volume. This volume will form a work of itself, closing the series of works mentioned in the preface.

What follows here may serve to give a slight intimation of

the nature of the task, which such a work will have to achieve: it will at the same time furnish, not any thing like a satisfactory answer to the questions mentioned in the text, but a slight and general indication of the course to be taken for giving them such an answer.

By a law *here is not meant a* statute. What is a law? What the parts of a law? The subject of these questions, it is to be observed, is the *logical*, the *ideal*, the *intellectual* whole, not the *physical* one: the *law*, and not the *statute*. An enquiry, directed to the latter sort of object, could neither admit of difficulty nor afford instruction. In this sense whatever is given for law by the person or persons recognised as possessing the power of making laws, is *law*. The Metamorphoses of Ovid, if thus given, would be law. So much as was embraced by one and the same act of authentication, so much as received the touch of the sceptre at one stroke, is *one* law: a whole law, and nothing more. A statute of George II. made to substitute an *or* instead of an *and* in a former statute is a complete law; a statute containing an entire body of laws, perfect in all its parts, would not be more so. By the word *law* then, as often as it occurs in the succeeding pages is meant that ideal object, of which the part, the whole, or the multiple, or an assemblage of parts, wholes, and multiples mixed together, is exhibited by a statute; not the statute which exhibits them.

Every law is either a command, or a revocation of one. Every law, when complete, is either of a *coercive* or an *uncoercive* nature.

A coercive law is a *command*.

An uncoercive, or rather a *discoercive*, law is the *revocation*, in whole or in part, of a coercive law.

A declaratory law is not, properly speaking, a law. What has been termed a *declaratory* law, so far as it stands distinguished from either a coercive or a discoercive law, is not properly speaking a law. It is not the expression of an act of the will exercised at the time: it is a mere notification of the existence of a law, either of the coercive or the discoercive kind, as already subsisting: of the existence of some document expressive of some act of the will, exercised, not at the

time, but at some former period. If it does any thing more than give information of this fact, viz. of the prior existence of a law of either the coercive or the discoercive kind, it ceases *pro tanto* to be what is meant by a declaratory law, and assuming either the coercive or the discoercive quality.

Every coercive law creates an offence. Every coercive law creates an *offence*, that is converts an act of some sort, or other into an offence. It is only by so doing that it can *impose obligation*, that it can *produce coercion*.

VI. *A law creating an offence, and one appointing punishment, are distinct laws.* A law confining itself to the creation of an offence, and a law commanding a punishment to be administered in case of the commission of such an offence, are two distinct laws; not parts (as they seem to have been generally accounted hitherto) of one and the same law. The acts they command are altogether different; the persons they are addressed to are altogether different. Instance, *Let no man steal*; and, *Let the judge cause whoever is convicted of stealing to be hanged.*

They might be styled; the former, a *simply imperative* law; the other a *punitory:* but the punitory, if it commands the punishment to be inflicted, and does not merely permit it, is as truly *imperative* as the other: only it is punitory besides, which the other is not.

VII. *A discoercive law can have no punitory one appertaining to it but through the intervention of coercive one.* A law of the discoercive kind, considered in itself, can have no punitory law belonging to it: to receive the assistance and support of a punitory law, it must first receive that of a simply imperative or coercive law, and it is to this latter that the punitory law will attach itself, and not to the discoercive one. Example; discoercive law. *The sheriff has power to hang all such as the judge, proceeding in due course of law, shall order him to hang.* Example of a coercive law, made in support of the above discoercive one. *Let no man hinder the sheriff from hanging such as the judge, proceeding in due course of law, shall order him to hang.* Example of a punitory law, made in support of the above coercive one. *Let the judge cause to be*

imprisoned whosoever attempts to hinder the sheriff from hanging one, whom the judge, proceeding in due course of law, has ordered him to hang.

VIII. *But a punitory law involves the simply imperative one it belongs to.* But though a simply imperative law, and the punitory law attached to it, are so far distinct laws, that the former contains nothing of the latter, and the latter, in its direct tenor, contains nothing of the former; yet by *implication*, and that a necessary one, the punitory does involve and include the import of the simply imperative law to which it is appended. To say to the judge, *Cause to be hanged whoever in due form of law is convicted of stealing*, is, though not a direct, yet as intelligible a way of intimating to men in general that they must not steal, as to say to them directly, *Do not steal*: and one sees, how much more likely to be efficacious.

IX. *The simply imperative one might therefore be spared, but for its expository matter.* It should seem then, that, wherever a simply imperative law is to have a punitory one appended to it, the former might be spared altogether: in which case, saving the exception (which naturally should seem not likely to be a frequent one) of a law capable of answering its purpose without such an appendage, there should be no occasion in the whole body of the law for any other than punitory, or in other words than *penal*, laws. And this, perhaps, would be the case, were it not for the necessity of a large quantity of matter of the *expository* kind, of which we come now to speak.

X. *Nature of such expository matter.* It will happen in the instance of many, probably of most, possibly of all commands endued with the force of a public law, that, in the expression given to such a command, it shall be necessary to have recourse to terms too complex in their signification to exhibit the requisite ideas, without the assistance of a greater or less quantity of matter of an expository nature. Such terms, like the symbols used in algebraical notation, are rather substitutes and indexes to the terms capable of themselves of exhibiting the ideas in question, than the real and immediate representatives of those ideas.

Take for instance the law, *Thou shalt not steal.* Such a command, were it to rest there, could never sufficiently answer the purpose of a law. A word of so vague and unexplicit a meaning can no otherwise perform this office, than by giving a general intimation of a variety of propositions, each requiring, to convey it to the apprehension, a more particular and ample assemblage of terms. Stealing, for example (according to a definition not accurate enough for use, but sufficiently so for the present purpose), *is the taking of a thing which is another's, by one who has no* TITLE *so to do,* and *is conscious of his having none.* Even after this exposition, supposing it a correct one, can the law be regarded as completely expressed? Certainly not. For what is meant by *a man's having a* TITLE *to take a thing?* To be complete, the law must have exhibited, amongst a multitude of other things, two catalogues: the one of events to which it has given the quality of *conferring title* in such a case; the other of the events to which it has given the quality of *taking it away.* What follows? That for a man to have *stolen,* for a man to *have had no title to what he took,* either no one of the articles contained in the first of those lists must have happened in his favour, or if there has, some one of the number of those contained in the second must have happened to his prejudice.

XI. *The vastness of its comparative bulk is not peculiar to legislative commands.* Such then is the nature of a general law, that while the imperative part of it, the *punctum saliens* as it may be termed, of this artificial body, shall not take up above two or three words, its expository appendage, without which that imperative part could not rightly perform its office, may occupy a considerable volume.

But this may equally be the case with a private order given in a family. Take for instance one from a bookseller to his foreman. *Remove, from this shop to my new one, my whole stock, according to this printed catalogue.—Remove, from this shop to my new one, my whole stock,* is the imperative matter of this order; the catalogue referred to contains the expository appendage.

XII. *The same mass of expository matter may serve in*

common for many laws. The same mass of expository matter may serve in common for, may appertain in common to, many commands, many masses of imperative matter. Thus, amongst other things, the catalogue of *collative* and *ablative* events, with respect to *titles* above spoken of (see No. IX. of this note), will belong in common to all or most of the laws constitutive of the various offences against property. Thus, in mathematical diagrams, one and the same base shall serve for a whole cluster of triangles.

XIII. *The imperative character essential to law, is apt to be concealed in and by expository matter.* Such expository matter, being of a complexion so different from the imperative it would be no wonder if the connection of the former with the latter should escape the observation: which, indeed, is perhaps pretty generally the case. And so long as any mass of legislative matter presents itself, which is not itself imperative or the contrary, or of which the connection with matter of one of those two descriptions is not apprehended, so long and so far the truth of the proposition, *That every law is a command or its opposite,* may remain unsuspected, or appear questionable; so long also may the incompleteness of the greater part of those masses of legislative matter, which wear the complexion of complete laws upon the face of them, also the method to be taken for rendering them really complete, remain undiscovered.

XIV. *The concealment is favoured by the multitude of indirect forms in which imperative matter is capable of being couched.* A circumstance, that will naturally contribute to increase the difficulty of the discovery, is the great variety of ways in which the imperation of a law may be conveyed—the great variety of forms which the imperative part of a law may indiscriminately assume: some more directly, some less directly expressive of the imperative quality. *Thou shalt not steal. Let no man steal. Whoso stealeth shall be punished so and so. If any man steal, he shall be punished so and so. Stealing is where a man does so and so; the punishment for stealing is so and so. To judges* so and so named, and so and so constituted, *belong the cognizance of such and such offences;* viz. *stealing*—and so on. These are but part of a multi-

tude of forms of words, in any of which the command by which stealing is prohibited might equally be couched: and it is manifest to what a degree, in some of them, the imperative quality is clouded and concealed from ordinary apprehension.

XV. *Number and nature of the laws in a code how determined.* After this explanation, a general proposition or two, that may be laid down, may help to afford some little insight into the structure and contents of a complete body of laws.—So many different sorts of *offences* created, so many different laws of the *coercive* kind: so many *exceptions* taken out of the descriptions of those offences, so many laws of the *discoercive* kind.

To class *offences*, as hath been attempted to be done in the preceding chapter, is therefore to class *laws:* to exhibit a complete catalogue of all the offences created by law, including the whole mass of expository matter necessary for fixing and exhibiting the import of the terms contained in the several laws, by which those offences are respectively created, would be to exhibit a complete collection of the laws in force: in a word a complete body of law; a *pannomion*, if so it might be termed.

XVI. *General idea of the limits between a civil and a penal code.* From the obscurity in which the limits of a *law*, and the distinction betwixt a law of the civil or simply imperative kind and a punitory law, are naturally involved, results the obscurity of the limits betwixt a civil and a penal *code*, betwixt a civil branch of the law and the penal.

The question, *What parts of the total mass of legislative matter belong to the civil branch, and what to the penal?* supposes that divers political states, or at least that some one such state, are to be found, having as well a civil code as a penal code, each of them complete in its kind, and marked out by certain limits. But no *one* such state has ever yet existed.

To put a question to which a true answer can be given, we must substitute to the foregoing question some such a one as that which follows:

Suppose two masses of legislative matter to be drawn up

at this time of day, the one under the name of a civil code, the other of a penal code, each meant to be complete in its kind—in what general way, is it natural to suppose, that the different sorts of matter, as above distinguished, would be distributed between them?

To this question the following answer seems likely to come as near as any other to the truth.

The *civil* code would not consist of a collection of civil laws, each complete in itself, as well as clear of all penal ones:

Neither would the *penal* code (since we have seen that it *could* not) consist of a collection of punitive laws, each not only complete in itself, but clear of all civil ones. But

XVII. Contents of a civil code. The civil code would consist chiefly of mere masses of expository matter. The imperative matter, to which those masses of expository matter respectively appertained, would be found—not in that same code—not in the civil code—nor in a pure state, free from all admixture of punitory laws; but in the penal code—in a state of combination—involved, in manner as above explained, in so many correspondent punitory laws.

XVIII. Contents of a penal code. The penal code then would consist principally of punitive laws, involving the imperative matter of the whole number of civil laws: along with which would probably also be found various masses of expository matter, appertaining not to the civil, but to the punitory laws. The body of penal law, enacted by the Empress-Queen Maria Theresa, agrees pretty well with this account.

XIX. In the Code Frederic the imperative character is almost lost in the expository matter. The mass of legislative matter published in French as well as German, under the auspices of Frederic II. of Prussia, by the name of Code Frederic, but never established with force of law [Mirabeau sur la Monarchie Prussienne, Tom. v. Liv. 8. p. 215.], appears, for example, to be almost wholly composed of masses of expository matter, the relation of which to any imperative matter appears to have been but very imperfectly apprehended.

XX. So in the Roman law. In that enormous mass of con-

fusion and inconsistency, the ancient Roman, or, as it is termed by way of eminence, the *civil* law, the imperative matter, and even all traces of the imperative character, seem at last to have been smothered in the expository. *Esto* had been the language of primæval simplicity: *esto* had been the language of the twelve tables. By the time of Justinian (so thick was the darkness raised by clouds of commentators) the penal law had been crammed into an odd corner of the civil—the whole catalogue of offences, and even of crimes, lay buried under a heap of *obligations*—*will* was hid in *opinion*—and the original *esto* had transformed itself into *videtur*, in the mouths even of the most despotic sovereigns.

XXI. In the barbarian codes it stands conspicuous. Among the barbarous nations that grew up out of the ruins of the Roman Empire, Law, emerging from under the mountain of expository rubbish, reassumed for a while the language of command: and then she had simplicity at least, if nothing else, to recommend her.

XXII. Constitutional code, its connexion with the two others. Besides the civil and the penal, every complete body of law must contain a third branch, the *constitutional*.

The constitutional branch is chiefly employed in conferring, on particular classes of persons, *powers*, to be exercised for the good of the whole society, or of considerable parts of it, and prescribing *duties* to the persons invested with those powers.

The powers are principally constituted, in the first instance, by discoercive or permissive laws, operating as exceptions to certain laws of the coercive or imperative kind. Instance: *A tax-gatherer, as such, may, on such and such an occasion, take such and such things, without any other* TITLE.

The duties are created by imperative laws, addressed to the persons on whom the powers are conferred. Instance: *On such and such an occasion, such and such a tax-gatherer shall take such and such things. Such and such a judge shall, in such and such a case, cause persons so and so offending to be hanged.*

The parts which perform the function of indicating who the individuals are, who, in every case, shall be considered as

belonging to those classes, have neither a permissive complexion, nor an imperative.

They are so many masses of expository matter, appertaining in common to all laws, into the texture of which, the names of those classes of persons have occasion to be inserted. Instance; imperative matter:—*Let the judge cause whoever, in due course of law, is convicted of stealing, to be hanged.* Nature of the expository matter:—Who is the person meant by the word *judge?* He who has been *invested* with that office in such a manner: and in respect of whom no *event* has happened, of the number of those, to which the effect is given, of reducing him to the condition of one *divested* of that office.

XXIII. Thus the matter of one law may be divided among all three codes. Thus it is, that one and the same law, one and the same command, will have its matter divided, not only between two great codes, or main branches of the whole body of the laws, the civil and the penal; but amongst three such branches, the civil, the penal, and the constitutional.

XXIV. Expository matter, a great quantity of it exists everywhere, in no other form than that of common or judiciary law. In countries, where a great part of the law exists in no other shape, than that of which in England is called *common* law but might be more expressively termed *judiciary*, there must be a great multitude of laws, the import of which cannot be sufficiently made out for practice, without referring to this common law, for more or less of the expository matter belonging to them. Thus in England the exposition of the word *title*, that basis of the whole fabric of the laws of property, is nowhere else to be found. And, as uncertainty is of the very essence of every particle of law so denominated (for the instant it is clothed in a certain authoritative form of words it changes its nature, and passes over to the other denomination) hence it is that a great part of the laws in being in such countries remain uncertain and incomplete. What are those countries? To this hour, every one on the surface of the globe.

XXV. Hence the deplorable state of the science of legisla-

tion, considered in respect of its form. Had the science of architecture no fixed nomenclature belonging to it—were there no settled names for distinguishing the different sorts of buildings, nor the different parts of the same building from each other—what would it be? It would be what the science of legislation, considered with respect to its *form*, remains at present.

Were there no architects who could distinguish a dwelling-house from a barn, or a side-wall from a ceiling, what would architects be? They would be what all legislators are at present.

XXVI. *Occasions affording an exemplification of the difficulty as well as importance of this branch of science;—attempts to limit the powers of supreme representative legislatures.* From this very slight and imperfect sketch, may be collected not an answer to the questions in the text but an intimation, and that but an imperfect one, of the course to be taken for giving such an answer; and, at any rate, some idea of the difficulty, as well as of the necessity, of the task.

If it were thought necessary to recur to experience for proofs of this difficulty, and this necessity, they need not be long wanting.

Take, for instance, so many well-meant endeavours on the part of popular bodies, and so many well-meant recommendations in ingenious books, to restrain supreme representative assemblies from making laws in such and such cases, or to such and such an effect. Such laws, to answer the intended purpose, require a perfect mastery in the science of law considered in respect of its form—in the sort of anatomy spoken of in the preface to this work: but a perfect, or even a moderate insight into that science, would prevent their being couched in those loose and inadequate terms, in which they may be observed so frequently to be conceived; as a perfect acquaintance with the dictates of utility on that head would, in many, if not in most, of those instances, discounsel the attempt. Keep to the letter, and in attempting to prevent the making of bad laws, you will find them prohibiting the making of the most necessary laws, perhaps even of all laws: quit

the letter, and they express no more than if each man were to say, *Your laws shall become ipso facto void, as often as they contain any thing which is not to my mind.*

Of such unhappy attempts, examples may be met with in the legislation of many nations: but in none more frequently than in that newly-created nation, one of the most enlightened, if not the most enlightened, at this day on the globe.

XXVII. Example: American declarations of rights. Take for instance the *Declaration of Rights*, enacted by the State of North Carolina, in convention, in or about the month of September, 1788, and said to be copied, with a small exception, from one in like manner enacted by the State of Virginia [Recherches sur les Etats Unis, 8vo. 1788, vol. i. p. 158.].

The following, to go no farther, is the first and fundamental article:

'That there are certain natural rights, of which men, when they form a social compact, cannot deprive or divest their posterity, among which are the enjoyment of life and liberty, with the means of acquiring, possessing, and protecting property, and pursuing and obtaining happiness and safety.'

Not to dwell on the oversight of confining to posterity the benefit of the rights thus declared, what follows? That—as against those whom the protection, thus meant to be afforded, includes—every law, or other order, *divesting* a man of *the enjoyment of life* or *liberty*, is void.

Therefore this is the case, amongst others, with every coercive law.

Therefore, as against the persons thus protected, every order, for example, to pay money on the score of taxation, or of debt from individual to individual, or otherwise, is void: for the effect of it, if complied with, is 'to *deprive* and *divest him*,' *pro tanto*, of the enjoyment of liberty, viz. the liberty of paying or not paying as he thinks proper: not to mention the species opposed to imprisonment, in the event of such a mode of coercion's being resorted to: likewise of property, which is itself a '*means of acquiring, possessing, and protecting property, and of pursuing and obtaining happiness and safety.*'

Therefore also, as against such persons, every order to attack an armed enemy, in time of war, is also void: for, the necessary effect of such an order is '*to deprive* some of them of *the enjoyment of life.*'

The above-mentioned consequences may suffice for examples, amongst an endless train of similar ones.†

Leaning on his elbow, in an attitude of profound and solemn meditation, '*What a multitude of things there are*' (exclaimed the dancing-master Marcel) '*in a minuet!*'—May we now add?—*and in a law.*

† The Virginian Declaration of Rights, said, in the French work above quoted, to have been enacted the 1st of June, 1776, is not inserted in the publication entitled '*The Constitutions of the several independent states of America, &c.' Published by order of Congress: Philadelphia printed. Reprinted for Stockdale and Walker, London,* 1782: though that publication contains the form of government enacted in the same convention, between the 6th of May and the 5th of July in the same year.

But in that same publication is contained a *Declaration of Rights,* of the province of *Massachusetts,* dated in the year 1779 and 1780, which in its first article is a little similar: also one of the province of *Pennsylvania,* dated between July 15th and September 28th, in which the similarity is rather more considerable.

Moreover, the famous *Declaration of Independence,* published by Congress July 5th, 1776, after a preambular opening, goes on in these words: '*We hold these truths to be self-evident: that all men are created equal: that they are endued* by the creator *with certain unalienable rights:* that *amongst those are life, liberty, and the pursuit of happiness.*'

The Virginian Declaration of Rights is that, it seems, which claims the honour of having served as a model to those of the other Provinces; and in re-

spect of the above leading article, at least, to the above-mentioned general Declaration of Independence. See Recherches, &c., i. 197.

Who can help lamenting, that so rational a cause should be rested upon reasons, so much fitter to beget objections, than to remove them?

But with men, who are unanimous and hearty about *measures*, nothing so weak but may pass in the character of a *reason:* nor is this the first instance in the world, where the conclusion has supported the premises, instead of the premises the conclusion.

UTILITARIANISM

CHAPTER I

GENERAL REMARKS

There are few circumstances among those which make up the present condition of human knowledge, more unlike what might have been expected, or more significant of the backward state in which speculation on the most important subjects still lingers, than the little progress which has been made in the decision of the controversy respecting the criterion of right and wrong. From the dawn of philosophy, the question concerning the *summum bonum*, or, what is the same thing, concerning the foundation of morality, has been accounted the main problem in speculative thought, has occupied the most gifted intellects, and divided them into sects and schools, carrying on a vigorous warfare against one another. And after more than two thousand years the same discussions continue, philosophers are still ranged under the same contending banners, and neither thinkers nor mankind at large seem nearer to being unanimous on the subject, than when the youth Socrates listened to the old Protagoras, and asserted (if Plato's dialogue be grounded on a real conversation) the theory of utilitarianism against the popular morality of the so-called sophist.

It is true that similar confusion and uncertainty, and in some cases similar discordance, exist respecting the first principles of all the sciences, not excepting that which is deemed the most certain of them, mathematics; without much impairing, generally indeed without impairing at all, the trustworthiness of the conclusions of those sciences. An apparent anomaly, the explanation of which is that the detailed doctrines of a science are not usually deduced from, nor depend

for their evidence upon, what are called its first principles. Were it not so, there would be no science more precarious, or whose conclusions were more insufficiently made out, than algebra; which derives none of its certainty from what are commonly taught to learners as its elements, since these, as laid down by some of its most eminent teachers, are as full of fictions as English law, and of mysteries as theology. The truths which are ultimately accepted as the first principles of a science, are really the last results of metaphysical analysis, practiced on the elementary notions with which the science is conversant; and their relation to the science is not that of foundations to an edifice, but of roots to a tree, which may perform their office equally well though they be never dug down to and exposed to light. But though in science the particular truths precede the general theory, the contrary might be expected to be the case with a practical art, such as morals or legislation. All action is for the sake of some end, and rules of action, it seems natural to suppose, must take their whole character and color from the end to which they are subservient. When we engage in a pursuit, a clear and precise conception of what we are pursuing would seem to be the first thing we need, instead of the last we are to look forward to. A test of right and wrong must be the means, one would think, of ascertaining what is right or wrong, and not a consequence of having already ascertained it.

The difficulty is not avoided by having recourse to the popular theory of a natural faculty, a sense or instinct, informing us of right and wrong. For—besides that the existence of such a moral instinct is itself one of the matters in dispute—those believers in it who have any pretensions to philosophy, have been obliged to abandon the idea that it discerns what is right or wrong in the particular case in hand, as our other senses discern the sight or sound actually present. Our moral faculty, according to all those of its interpreters who are entitled to the name of thinkers, supplies us only with the general principles of moral judgments; it is a branch of our reason, not of our sensitive faculty; and must be looked to for the abstract doctrines of morality, not for perception of it in the concrete. The intuitive, no less than what may be termed the

inductive, school of ethics, insists on the necessity of general laws. They both agree that the morality of an individual action is not a question of direct perception, but of the application of a law to an individual case. They recognize also, to a great extent, the same moral laws; but differ as to their evidence, and the source from which they derive their authority. According to the one opinion, the principles of morals are evident *a priori*, requiring nothing to command assent, except that the meaning of the terms be understood. According to the other doctrine, right and wrong, as well as truth and falsehood, are questions of observation and experience. But both hold equally that morality must be deduced from principles; and the intuitive school affirm as strongly as the inductive that there is a science of morals. Yet they seldom attempt to make out a list of the *a priori* principles which are to serve as the premises of the science; still more rarely do they make any effort to reduce those various principles to one first principle, or common ground of obligation. They either assume the ordinary precepts of morals as of *a priori* authority, or they lay down as the common groundwork of those maxims some generality much less obviously authoritative than the maxims themselves, and which has never succeeded in gaining popular acceptance. Yet to support their pretensions there ought either to be some one fundamental principle or law, at the root of all morality, or if there be several, there should be a determinate order of precedence among them; and the one principal, or the rule for deciding between the various principles when they conflict, ought to be self-evident.

To inquire how far the bad effects of this deficiency have been mitigated in practice, or to what extent the moral beliefs of mankind have been vitiated or made uncertain by the absence of any distinct recognition of an ultimate standard, would imply a complete survey and criticism of past and present ethical doctrine. It would, however, be easy to show that whatever steadiness or consistency these moral beliefs have attained, has been mainly due to the tacit influence of a standard not recognized. Although the nonexistence of an acknowledged first principle has made ethics not so much a guide as a consecration of men's actual sentiments, still, as men's senti-

ments, both of favor and of aversion, are greatly influenced by what they suppose to be the effects of things upon their happiness, the principle of utility, or as Bentham latterly called it, the greatest happiness principle, has had a large share in forming the moral doctrines even of those who most scornfully reject its authority. Nor is there any school of thought which refuses to admit that the influence of actions on happiness is a most material and even predominant consideration in many of the details of morals, however unwilling to acknowledge it as the fundamental principle of morality, and the source of moral obligation. I might go much further, and say that to all those *a priori* moralists who deem it necessary to argue at all, utilitarian arguments are indispensable. It is not my present purpose to criticize these thinkers; but I cannot help referring, for illustration, to a systematic treatise by one of the most illustrious of them, the *Metaphysics of Ethics*, by Kant. This remarkable man, whose system of thought will long remain one of the landmarks in the history of philosophical speculation, does, in the treatise in question, lay down a universal first principle as the origin and ground of moral obligation; it is this:—"So act, that the rule on which thou actest would admit of being adopted as a law by all rational beings." But when he begins to deduce from this precept any of the actual duties of morality, he fails, almost grotesquely, to show that there would be any contradiction, any logical (not to say physical) impossibility, in the adoption by all rational beings of the most outrageously immoral rules of conduct. All he shows is that the *consequences* of their universal adoption would be such as no one would choose to incur.

On the present occasion, I shall, without further discussion of the other theories, attempt to contribute something towards the understanding and appreciation of the *utilitarian* or *happiness* theory, and towards such proof as it is susceptible of. It is evident that this cannot be proof in the ordinary and popular meaning of the term. Questions of ultimate ends are not amenable to direct proof. Whatever can be proved to be good, must be so by being shown to be a means to something admitted to be good without proof. The medical art is

proved to be good by its conducing to health; but how is it possible to prove that health is good? The art of music is good, for the reason, among others, that it produces pleasure; but what proof is it possible to give that pleasure is good? If, then, it is asserted that there is a comprehensive formula, including all things which are in themselves good, and that whatever else is good, is not so as an end, but as a mean, the formula may be accepted or rejected, but is not a subject of what is commonly understood by proof. We are not, however, to infer that its acceptance or rejection must depend on blind impulse, or arbitrary choice. There is a larger meaning of the word proof, in which this question is as amenable to it as any other of the disputed questions of philosophy. The subject is within the cognizance of the rational faculty; and neither does that faculty deal with it solely in the way of intuition. Considerations may be presented capable of determining the intellect either to give or withhold its assent to the doctrine; and this is equivalent to proof.

We shall examine presently of what nature are these considerations; in what manner they apply to the case, and what rational grounds, therefore, can be given for accepting or rejecting the utilitarian formula. But it is a preliminary condition of rational acceptance or rejection, that the formula should be correctly understood. I believe that the very imperfect notion ordinarily formed of its meaning is the chief obstacle which impedes its reception; and that could it be cleared, even from only the grosser misconceptions, the question would be greatly simplified, and a large proportion of its difficulties removed. Before, therefore, I attempt to enter into the philosophical grounds which can be given for assenting to the utilitarian standard, I shall offer some illustrations of the doctrine itself; with the view of showing more clearly what it is, distinguishing it from what it is not, and disposing of such of the practical objections to it as either originate in, or are closely connected with, mistaken interpretations of its meaning. Having thus prepared the ground, I shall afterwards endeavor to throw such light as I can upon the question, considered as one of philosophical theory.

CHAPTER II

WHAT UTILITARIANISM IS

A passing remark is all that needs be given to the ignorant blunder of supposing that those who stand up for utility as the test of right and wrong, use the term in that restricted and merely colloquial sense in which utility is opposed to pleasure. An apology is due to the philosophical opponents of utilitarianism, for even the momentary appearance of confounding them with anyone capable of so absurd a misconception; which is the more extraordinary, inasmuch as the contrary accusation, of referring everything to pleasure, and that too in its grossest form, is another of the common charges against utilitarianism: and, as has been pointedly remarked by an able writer, the same sort of persons, and often the very same persons, denounce the theory "as impracticably dry when the word utility precedes the word pleasure, and as too practicably voluptuous when the word pleasure precedes the word utility." Those who know anything about the matter are aware that every writer, from Epicurus to Bentham, who maintained the theory of utility, meant by it, not something to be contradistinguished from pleasure, but pleasure itself, together with exemption from pain; and instead of opposing the useful to the agreeable or the ornamental, have always declared that the useful means these, among other things. Yet the common herd, including the herd of writers, not only in newspapers, and periodicals, but in books of weight and pretension, are perpetually falling into this shallow mistake. Having caught up the word 'utilitarian,' while knowing nothing whatever about it but its sound, they habitually express by it the rejection, or

the neglect, of pleasure in some of its forms: of beauty, of ornament, or of amusement. Nor is the term thus ignorantly misapplied solely in disparagement, but occasionally in compliment; as though it implied superiority to frivolity and the mere pleasures of the moment. And this perverted use is the only one in which the word is popularly known, and the one from which the new generation are acquiring their sole notion of its meaning. Those who introduced the word, but who had for many years discontinued it as a distinctive appellation, may well feel themselves called upon to resume it, if by doing so they can hope to contribute anything towards rescuing it from this utter degradation.[1]

The creed which accepts as the foundation of morals *utility*, or the *greatest happiness principle*, holds that actions are right in proportion as they tend to promote happiness, wrong as they tend to produce the reverse of happiness. By 'happiness' is intended pleasure, and the absence of pain; by 'unhappiness,' pain, and the privation of pleasure. To give a clear view of the moral standard set up by the theory, much more requires to be said; in particular, what things it includes in the ideas of pain and pleasure; and to what extent this is left an open question. But these supplementary explanations do not affect the theory of life on which this theory of morality is grounded—namely, that pleasure, and freedom from pain, are the only things desirable as ends; and that all desirable things (which are as numerous in the utilitarian as in any other scheme) are desirable either for the pleasure inherent in themselves, or as means to the promotion of pleasure and the prevention of pain.

Now such a theory of life excites in many minds, and among them in some of the most estimable in feeling and purpose, inveterate dislike. To suppose that life has (as they express it) no higher end than pleasure—no better and nobler object of desire and pursuit—they designate as utterly mean and groveling; as a doctrine worthy only of swine, to whom the followers of Epicurus were, at a very early period, contemptuously likened; and modern holders of the doctrine are occasionally made the subject of equally polite comparisons by its German, French, and English assailants.

When thus attacked, the Epicureans have always answered that it is not they but their accusers who represent human nature in a degrading light; since the accusation supposes human beings to be capable of no pleasures except those of which swine are capable. If this supposition were true, the charge could not be gainsaid, but would then be no longer an imputation; for if the sources of pleasure were precisely the same to human beings and to swine, the rule of life which is good enough for the one would be good enough for the other. The comparison of the Epicurean life to that of beasts is felt as degrading, precisely because a beast's pleasures do not satisfy a human being's conceptions of happiness. Human beings have faculties more elevated than the animal appetites, and when once made conscious of them, do not regard anything as happiness which does not include their gratification. I do not, indeed, consider the Epicureans to have been by any means faultless in drawing out their scheme of consequences from the utilitarian principle. To do this in any sufficient manner, many Stoic, as well as Christian elements require to be included. But there is no known Epicurean theory of life which does not assign to the pleasures of the intellect, of the feelings and imagination, and of the moral sentiments, a much higher value as pleasures than to those of mere sensation. It must be admitted, however, that utilitarian writers in general have placed the superiority of mental over bodily pleasures chiefly in the greater permanency, safety, uncostliness, etc., of the former—that is, in their circumstantial advantages rather than in their intrinsic nature. And on all these points utilitarians have fully proved their case; but they might have taken the other, and, as it may be called, higher ground, with entire consistency. It is quite compatible with the principle of utility to recognize the fact, that some *kinds* of pleasure are more desirable and more valuable than others. It would be absurd that while, in estimating all other things, quality is considered as well as quantity, the estimation of pleasures should be supposed to depend on quantity alone.

If I am asked what I mean by difference of quality in pleasures, or what makes one pleasure more valuable than

another merely as a pleasure, except its being greater in amount, there is but one possible answer. Of two pleasures, if there be one to which all or almost all who have experience of both give a decided preference, irrespective of any feeling of moral obligation to prefer it, that is the more desirable pleasure. If one of the two is, by those who are competently acquainted with both, placed so far above the other that they prefer it, even though knowing it to be attended with a greater amount of discontent, and would not resign it for any quantity of the other pleasure which their nature is capable of, we are justified in ascribing to the preferred enjoyment a superiority in quality, so far outweighing quantity as to render it, in comparison, of small account.

Now it is an unquestionable fact that those who are equally acquainted with, and equally capable of appreciating and enjoying, both, do give a most marked preference to the manner of existence which employs their higher faculties. Few human creatures would consent to be changed into any of the lower animals, for a promise of the fullest allowance of a beast's pleasures; no intelligent human being would consent to be a fool, no instructed person would be an ignoramus, no person of feeling and conscience would be selfish and base, even though they should be persuaded that the fool, the dunce, or the rascal is better satisfied with his lot than they are with theirs. They would not resign what they possess more than he for the most complete satisfaction of all the desires which they have in common with him. If they ever fancy they would, it is only in cases of unhappiness so extreme, that to escape from it they would exchange their lot for almost any other, however undesirable in their own eyes. A being of higher faculties requires more to make him happy, is capable probably of more acute suffering, and certainly accessible to it at more points, than one of an inferior type; but in spite of these liabilities, he can never really wish to sink into what he feels to be a lower grade of existence. We may give what explanation we please of this unwillingness: we may attribute it to pride, a name which is given indiscriminately to some of the most and to some of the least estimable feelings of which man-

kind are capable; we may refer it to the love of liberty and personal independence, an appeal to which was with the Stoics one of the most effective means for the inculcation of it; to the love of power, or to the love of excitement, both of which do really enter into and contribute to it: but its most appropriate appellation is a sense of dignity, which all human beings possess in one form or other, and in some, though by no means in exact, proportion to their higher faculties, and which is so essential a part of the happiness of those in whom it is strong, that nothing which conflicts with it could be, otherwise than momentarily, an object of desire to them. Whoever supposes that this preference takes place at a sacrifice of happiness—that the superior being, in anything like equal circumstances, is not happier than the inferior—confounds the two very different ideas, of *happiness* and *content*. It is indisputable that the being whose capacities of enjoyment are low, has the greatest chance of having them fully satisfied; and a highly endowed being will always feel that any happiness which he can look for, as the world is constituted, is imperfect. But he can learn to bear its imperfections, if they are at all bearable; and they will not make him envy the being who is indeed unconscious of the imperfections, but only because he feels not at all the good which those imperfections qualify. It is better to be a human being dissatisfied than a pig satisfied; better to be Socrates dissatisfied than a fool satisfied. And if the fool, or the pig, are of a different opinion, it is because they only know their own side of the question. The other party to the comparison knows both sides.

It may be objected that many who are capable of the higher pleasures, occasionally, under the influence of temptation, postpone them to the lower. But this is quite compatible with a full appreciation of the intrinsic superiority of the higher. Men often, from infirmity of character, make their election for the nearer good, though they know it to be the less valuable; and this no less when the choice is between two bodily pleasures, than when it is between bodily and mental. They pursue sensual indulgences to the injury of health, though perfectly aware that health is the greater

good. It may be further objected that many who begin with youthful enthusiasm for everything noble, as they advance in years sink into indolence and selfishness. But I do not believe that those who undergo this very common change, voluntarily choose the lower description of pleasures in preference to the higher. I believe that before they devote themselves exclusively to the one, they have already become incapable of the other. Capacity for the nobler feelings is in most natures a very tender plant, easily killed, not only by hostile influences, but by mere want of sustenance; and in the majority of young persons it speedily dies away if the occupations to which their position in life has devoted them, and the society into which it has thrown them, are not favorable to keeping that higher capacity in exercise. Men lose their high aspirations as they lose their intellectual tastes, because they have not time or opportunity for indulging them; and they addict themselves to inferior pleasures not because they deliberately prefer them, but because they are either the only ones to which they have access or the only ones which they are any longer capable of enjoying. It may be questioned whether anyone who has remained equally susceptible to both classes of pleasures, ever knowingly and calmly preferred the lower; though many, in all ages, have broken down in an ineffectual attempt to combine both.

From this verdict of the only competent judges I apprehend there can be no appeal. On a question which is the best worth having of two pleasures, or which of two modes of existence is the most grateful to the feelings, apart from its moral attributes and from its consequences, the judgment of those who are qualified by knowledge of both, or, if they differ, that of the majority among them, must be admitted as final. And there need be the less hesitation to accept this judgment respecting the quality of pleasures, since there is no other tribunal to be referred to even on the question of quantity. What means are there of determining which is the acutest of two pains, or the intensest of two pleasurable sensations, except the general suffrage of those who are familiar with both? Neither pains nor pleasures are homogeneous, and pain is always heterogeneous with pleasure.

What is there to decide whether a particular pleasure is worth purchasing at the cost of a particular pain, except the feelings and judgment of the experienced? When, therefore, those feelings and judgment declare the pleasures derived from the higher faculties to be preferable *in kind*, apart from the question of intensity, to those of which the animal nature, disjoined from the higher faculties, is susceptible, they are entitled on this subject to the same regard.

I have dwelt on this point, as being a necessary part of a perfectly just conception of utility, or happiness, considered as the directive rule of human conduct. But it is by no means an indispensable condition to the acceptance of the utilitarian standard; for that standard is not the agent's own greatest happiness, but the greatest amount of happiness altogether; and if it may possibly be doubted whether a noble character is always the happier for its nobleness, there can be no doubt that it makes other people happier, and that the world in general is immensely a gainer by it. Utilitarianism, therefore, could only attain its end by the general cultivation of nobleness of character, even if each individual were only benefited by the nobleness of others, and his own, so far as happiness is concerned, were a sheer deduction from the benefit. But the bare enunciation of such an absurdity as this last renders refutation superfluous.

According to the 'greatest happiness principle,' as above explained, the ultimate end, with reference to and for the sake of which all other things are desirable (whether we are considering our own good or that of other people), is an existence exempt as far as possible from pain, and as rich as possible in enjoyments, both in point of quantity and quality; the test of quality, and the rule for measuring it against quantity, being the preference felt by those who in their opportunities of experience, to which must be added their habits of self-consciousness and self-observation, are best furnished with the means of comparison. This, being, according to the utilitarian opinion, the end of human action, is necessarily also the standard of morality; which may accordingly be defined, the rules and precepts for human con-

duct, by the observance of which an existence such as has been described might be, to the greatest extent possible, secured to all mankind; and not to them only, but, so far as the nature of things admits, to the whole sentient creation.

Against this doctrine, however, arises another class of objectors, who say that happiness, in any form, cannot be the rational purpose of human life and action; because, in the first place, it is unattainable: and they contemptuously ask, what right hast thou to be happy?—a question which Mr. Carlyle clenches by the addition, What right, a short time ago, hadst thou even *to be*? Next, they say that men can do *without* happiness; that all noble human beings have felt this, and could not have become noble but by learning the lesson of *Entsagen*, or renunciation; which lesson, thoroughly learnt and submitted to, they affirm to be the beginning and necessary condition of all virtue.

The first of these objections would go to the root of the matter were it well founded; for if no happiness is to be had at all by human beings, the attainment of it cannot be the end of morality, or of any rational conduct. Though, even in that case, something might still be said for the utilitarian theory; since utility includes not solely the pursuit of happiness, but the prevention or mitigation of unhappiness; and if the former aim be chimerical, there will be all the greater scope and more imperative need for the latter, so long at least as mankind think fit to live, and do not take refuge in the simultaneous act of suicide recommended under certain conditions by Novalis. When, however, it is thus positively asserted to be impossible that human life should be happy, the assertion, if not something like a verbal quibble, is at least an exaggeration. If by happiness be meant a continuity of highly pleasurable excitement, it is evident enough that this is impossible. A state of exalted pleasure lasts only moments, or in some cases, and with some intermissions, hours or days, and is the occasional brilliant flash of enjoyment, not its permanent and steady flame. Of this the philosophers who have taught that happiness is the end of life were as fully aware as those who taunt them. The happiness which they meant was not a life of rapture; but

moments of such, in an existence made up of few and transitory pains, many and various pleasures, with a decided predominance of the active over the passive, and having as the foundation of the whole, not to expect more from life than it is capable of bestowing. A life thus composed, to those who have been fortunate enough to obtain it, has always appeared worthy of the name of happiness. And such an existence is even now the lot of many, during some considerable portion of their lives. The present wretched education, and wretched social arrangements, are the only real hindrance to its being attainable by almost all.

The objectors perhaps may doubt whether human beings, if taught to consider happiness as the end of life, would be satisfied with such a moderate share of it. But great numbers of mankind have been satisfied with much less. The main constituents of a satisfied life appear to be two, either of which by itself is often found sufficient for the purpose: tranquillity and excitement. With much tranquillity, many find that they can be content with very little pleasure; with much excitement, many can reconcile themselves to a considerable quantity of pain. There is assuredly no inherent impossibility in enabling even the mass of mankind to unite both; since the two are so far from being incompatible that they are in natural alliance, the prolongation of either being a preparation for, and exciting a wish for, the other. It is only those in whom indolence amounts to a vice, that do not desire excitement after an interval of repose; it is only those in whom the need of excitement is a disease, that feel the tranquillity which follows excitement dull and insipid, instead of pleasurable in direct proportion to the excitement which preceded it. When people who are tolerably fortunate in their outward lot do not find in life sufficient enjoyment to make it valuable to them, the cause generally is, caring for nobody but themselves. To those who have neither public nor private affections, the excitements of life are much curtailed, and in any case dwindle in value as the time approaches when all selfish interests must be terminated by death; while those who leave after them objects of personal affection, and especially those who have

also cultivated a fellow-feeling with the collective interests of mankind, retain as lively an interest in life on the eve of death as in the vigor of youth and health. Next to selfishness, the principal cause which makes life unsatisfactory is want of mental cultivation. A cultivated mind (I do not mean that of a philosopher, but any mind to which the fountains of knowledge have been opened, and which has been taught, in any tolerable degree, to exercise its faculties) finds sources of inexhaustible interest in all that surrounds it; in the objects of nature, the achievements of art, the imaginations of poetry, the incidents of history, the ways of mankind, past and present, and their prospects in the future. It is possible, indeed, to become indifferent to all this, and that too without having exhausted a thousandth part of it; but only when one has had from the beginning no moral or human interest in these things, and has sought in them only the gratification of curiosity.

Now there is absolutely no reason in the nature of things why an amount of mental culture sufficient to give an intelligent interest in these objects of contemplation, should not be the inheritance of everyone born in a civilized country. As little is there an inherent necessity that any human being should be a selfish egotist, devoid of every feeling or care but those which center in his own miserable individuality. Something far superior to this is sufficiently common even now, to give ample earnest of what the human species may be made. Genuine private affections, and a sincere interest in the public good, are possible, though in unequal degrees, to every rightly brought up human being. In a world in which there is so much to interest, so much to enjoy, and so much also to correct and improve, everyone who has this moderate amount of moral and intellectual requisites is capable of an existence which may be called enviable; and unless such a person, through bad laws, or subjection to the will of others, is denied the liberty to use the sources of happiness within his reach, he will not fail to find this enviable existence, if he escape the positive evils of life, the great sources of physical and mental suffering—such as indigence, disease, and the unkindness, worthlessness, or

premature loss of objects of affection. The main stress of the problem lies, therefore, in the contest with these calamities, from which it is a rare good fortune entirely to escape; which, as things now are, cannot be obviated, and often cannot be in any material degree mitigated. Yet no one whose opinion deserves a moment's consideration can doubt that most of the great positive evils of the world are in themselves removable, and will, if human affairs continue to improve, be in the end reduced within narrow limits. Poverty, in any sense implying suffering, may be completely extinguished by the wisdom of society, combined with the good sense and providence of individuals. Even that most intractable of enemies, disease, may be indefinitely reduced in dimensions by good physical and moral education, and proper control of noxious influences; while the progress of science holds out a promise for the future of still more direct conquests over this detestable foe. And every advance in that direction relieves us from some, not only of the chances which cut short our own lives, but, what concerns us still more, which deprive us of those in whom our happiness is wrapt up. As for vicissitudes of fortune, and other disappointments connected with worldly circumstances, these are principally the effect either of gross imprudence, of ill-regulated desires, or of bad or imperfect social institutions. All the grand sources, in short, of human suffering are in a great degree, many of them almost entirely, conquerable by human care and effort; and though their removal is grievously slow—though a long succession of generations will perish in the breach before the conquest is completed, and this world becomes all that, if will and knowledge were not wanting, it might easily be made—yet every mind sufficiently intelligent and generous to bear a part, however small and unconspicuous, in the endeavor, will draw a noble enjoyment from the contest itself, which he would not for any bribe in the form of selfish indulgence consent to be without.

And this leads to the true estimation of what is said by the objectors concerning the possibility, and the obligation, of learning to do without happiness. Unquestionably it is possible to do without happiness; it is done involuntarily by

nineteen-twentieths of mankind, even in those parts of our present world which are least deep in barbarism; and it often has to be done voluntarily by the hero or the martyr, for the sake of something which he prizes more than his individual happiness. But this something, what is it, unless the happiness of others, or some of the requisites of happiness? It is noble to be capable of resigning entirely one's own portion of happiness, or chances of it: but, after all, this self-sacrifice must be for some end; it is not its own end; and if we are told that its end is not happiness, but virtue, which is better than happiness, I ask, would the sacrifice be made if the hero or martyr did not believe that it would earn for others immunity from similar sacrifices? Would it be made if he thought that his renunciation of happiness for himself would produce no fruit for any of his fellow creatures, but to make their lot like his, and place them also in the condition of persons who have renounced happiness? All honor to those who can abnegate for themselves the personal enjoyment of life, when by such renunciation they contribute worthily to increase the amount of happiness in the world; but he who does it, or professes to do it, for any other purpose, is no more deserving of admiration from the ascetic mounted on his pillar. He may be an inspiriting proof of what men *can* do, but assuredly not an example of what they *should*.

Though it is only in a very imperfect state of the world's arrangements that anyone can best serve the happiness of others by the absolute sacrifice of his own, yet so long as the world is in that imperfect state, I fully acknowledge that the readiness to make such a sacrifice is the highest virtue which can be found in man. I will add that in this condition of the world, paradoxical as the assertion may be, the conscious ability to do without happiness gives the best prospect of realizing such happiness as is attainable. For nothing except that consciousness can raise a person above the chances of life, by making him feel that, let fate and fortune do their worst, they have not power to subdue him; which, once felt, frees him from excess of anxiety concerning the evils of life, and enables him, like many a Stoic in the worst times

of the Roman Empire, to cultivate in tranquillity the sources of satisfaction accessible to him, without concerning himself about the uncertainty of their duration, any more than about their inevitable end.

Meanwhile, let utilitarians never cease to claim the morality of self-devotion as a possession which belongs by as good a right to them, as either to the Stoic or to the Transcendentalist. The utilitarian morality does recognize in human beings the power of sacrificing their own greatest good for the good of others. It only refuses to admit that the sacrifice is itself a good. A sacrifice which does not increase, or tend to increase, the sum total of happiness, it considers as wasted. The only self-renunciation which it applauds, is devotion to the happiness, or to some of the means of happiness, of others; either of mankind collectively, or of individuals within the limits imposed by the collective interests of mankind.

I must again repeat, what the assailants of utilitarianism seldom have the justice to acknowledge, that the happiness which forms the utilitarian standard of what is right in conduct, is not the agent's own happiness, but that of all concerned. As between his own happiness and that of others, utilitarianism requires him to be as strictly impartial as a disinterested and benevolent spectator. In the golden rule of Jesus of Nazareth, we read the complete spirit of the ethics of utility. To do as you would be done by, and to love your neighbor as yourself, constitute the ideal perfection of utilitarian morality. As the means of making the nearest approach to this ideal, utility would enjoin, first, that laws and social arrangements should place the happiness, or (as speaking practically it may be called) the interest, of every individual, as nearly as possible in harmony with the interest of the whole; and secondly, that education and opinion, which have so vast a power over human character, should so use that power as to establish in the mind of every individual an indissoluble association between his own happiness and the good of the whole—especially between his own happiness and the practice of such modes of conduct, negative and positive, as regard for the universal happiness prescribes;

so that not only he may be unable to conceive the possibility of happiness to himself, consistently with conduct opposed to the general good, but also that a direct impulse to promote the general good may be in every individual one of the habitual motives of action, and the sentiments connected therewith may fill a large and prominent place in every human being's sentient existence. If the impugners of the utilitarian morality represented it to their own minds in this its true character, I know not what recommendation possessed by any other morality they could possibly affirm to be wanting to it; what more beautiful or more exalted developments of human nature any other ethical system can be supposed to foster, or what springs of action, not accessible to the utilitarian, such systems rely on for giving effect to their mandates.

The objectors to utilitarianism cannot always be charged with representing it in a discreditable light. On the contrary, those among them who entertain anything like a just idea of its disinterested character sometimes find fault with its standard as being too high for humanity. They say it is exacting too much to require that people shall always act from the inducement of promoting the general interests of society. But this is to mistake the very meaning of a standard of morals, and confound the rule of action with the motive of it. It is the business of ethics to tell us what are our duties, or by what test we may know them; but no system of ethics requires that the sole motive of all we do shall be a feeling of duty; on the contrary, ninety-nine hundredths of all our actions are done from other motives, and rightly so done, if the rule of duty does not condemn them. It is the more unjust to utilitarianism that this particular misapprehension should be made a ground of objection to it, inasmuch as utilitarian moralists have gone beyond almost all others in affirming that the motive has nothing to do with the morality of the action, though much with the worth of the agent. He who saves a fellow creature from drowning does what is morally right, whether his motive be duty, or the hope of being paid for his trouble; he who betrays the friend that trusts him, is guilty of a crime, even if his object

be to serve another friend to whom he is under greater obligations. But to speak only of actions done from the motive of duty, and in direct obedience to principle: it is a misapprehension of the utilitarian mode of thought, to conceive it as implying that people should fix their minds upon so wide a generality as the world, or society at large. The great majority of good actions are intended not for the benefit of the world, but for that of individuals, of which the good of the world is made up; and the thoughts of the most virtuous man need not on these occasions travel beyond the particular persons concerned, except so far as is necessary to assure himself that in benefiting them he is not violating the rights, that is, the legitimate and authorized expectations, of anyone else. The multiplication of happiness is, according to the utilitarian ethics, the object of virtue: the occasions on which any person (except one in a thousand) has it in his power to do this on an extended scale, in other words to be a public benefactor, are but exceptional, and on these occasions alone is he called on to consider public utility; in every other case, private utility, the interest or happiness of some few persons, is all he has to attend to. Those alone the influence of whose actions extends to society in general, need concern themselves habitually about so large an object. In the case of abstinences indeed—of things which people forbear to do from moral considerations, though the consequences in the particular case might be beneficial—it would be unworthy of an intelligent agent not to be consciously aware that the action is of a class which, if practiced generally, would be generally injurious, and that this is the ground of the obligation to abstain from it. The amount of regard for the public interest implied in this recognition is no greater than is demanded by every system of morals, for they all enjoin to abstain from whatever is manifestly pernicious to society.

The same considerations dispose of another reproach against the doctrine of utility, founded on a still grosser misconception of the purpose of a standard of morality, and of the very meaning of the words right and wrong. It is often

affirmed that utilitarianism renders men cold and unsympathizing; that it chills their moral feelings towards individuals; that it makes them regard only the dry and hard consideration of the consequences of actions, not taking into their moral estimate the qualities from which those actions emanate. If the assertion means that they do not allow their judgment respecting the rightness or wrongness of an action to be influenced by their opinion of the qualities of the person who does it, this is a complaint not against utilitarianism, but against having any standard of morality at all; for certainly no known ethical standard decides an action to be good or bad because it is done by a good or a bad man, still less because done by an amiable, a brave, or a benevolent man, or the contrary. These considerations are relevant, not to the estimation of actions, but of persons; and there is nothing in the utilitarian theory inconsistent with the fact that there are other things which interest us in persons besides the rightness and wrongness of their actions. The Stoics, indeed, with the paradoxical misuse of language which was part of their system, and by which they strove to raise themselves above all concern about anything but virtue, were fond of saying that he who has that has everything; that he, and only he, is rich, is beautiful, is a king. But no claim of this description is made for the virtuous man by the utilitarian doctrine. Utilitarians are quite aware that there are other desirable possessions and qualities besides virtue, and are perfectly willing to allow to all of them their full worth. They are also aware that a right action does not necessarily indicate a virtuous character, and that actions which are blamable, often proceed from qualities entitled to praise. When this is apparent in any particular case, it modifies their estimation, not certainly of the act, but of the agent. I grant that they are, notwithstanding, of opinion that in the long run the best proof of a good character is good actions; and resolutely refuse to consider any mental disposition as good, of which the predominant tendency is to produce bad conduct. This makes them unpopular with many people; but it is an unpopularity which they must share

with everyone who regards the distinction between right and wrong in a serious light; and the reproach is not one which a conscientious utilitarian need be anxious to repel.

If no more be meant by the objection than that many utilitarians look on the morality of actions, as measured by the utilitarian standard, with too exclusive a regard, and do not lay sufficient stress upon the other beauties of character which go towards making a human being lovable or admirable, this may be admitted. Utilitarians who have cultivated their moral feelings, but not their sympathies nor their artistic perceptions, do fall into this mistake; and so do all other moralists under the same conditions. What can be said in excuse for other moralists is equally available for them, namely, that if there is to be any error, it is better that it should be on that side. As a matter of fact, we may affirm that among utilitarians as among adherents of other systems, there is every imaginable degree of rigidity and of laxity in the application of their standard: some are even puritanically rigorous, while others are as indulgent as can possibly be desired by sinner or by sentimentalist. But on the whole, a doctrine which brings prominently forward the interest that mankind have in the repression and prevention of conduct which violates the moral law, is likely to be inferior to no other in turning the sanctions of opinion against such violations. It is true, the question, "What does violate the moral law?" is one on which those who recognize different standards of morality are likely now and then to differ. But difference of opinion on moral questions was not first introduced into the world by utilitarianism, while that doctrine does supply, if not always an easy, at all events a tangible and intelligible mode of deciding such differences.

It may not be superfluous to notice a few more of the common misapprehensions of utilitarian ethics, even those which are so obvious and gross that it might appear impossible for any person of candor and intelligence to fall into them; since persons, even of considerable mental endowments, often give themselves so little trouble to understand the bearings of any opinion against which they entertain a prejudice, and

men are in general so little conscious of this voluntary ignorance as a defect, that the vulgarest misunderstandings of ethical doctrines are continually met with in the deliberate writings of persons of the greatest pretensions both to high principle and to philosophy. We not uncommonly hear the doctrine of utility inveighed against as a *godless* doctrine. If it be necessary to say anything at all against so mere an assumption, we may say that the question depends upon what idea we have formed of the moral character of the Deity. If it be a true belief that God desires, above all things, the happiness of his creatures, and that this was his purpose in their creation, utility is not only not a godless doctrine, but more profoundly religious than any other. If it be meant that utilitarianism does not recognize the revealed will of God as the supreme law of morals, I answer that a utilitarian who believes in the perfect goodness and wisdom of God, necessarily believes that whatever God has thought fit to reveal on the subject of morals, must fulfil the requirements of utility in a supreme degree. But others besides utilitarians have been of opinion that the Christian revelation was intended, and is fitted, to inform the hearts and minds of mankind with a spirit which should enable them to find for themselves what is right, and incline them to do it when found, rather than to tell them, except in a very general way, what it is; and that we need a doctrine of ethics, carefully followed out, to *interpret* to us the will of God. Whether this opinion is correct or not, it is superfluous here to discuss; since whatever aid religion, either natural or revealed, can afford to ethical investigation, is as open to the utilitarian moralist as to any other. He can use it as the testimony of God to the usefulness or hurtfulness of any given course of action, by as good a right as others can use it for the indication of a transcendental law, having no connection with usefulness or with happiness.

Again, utility is often summarily stigmatized as an immoral doctrine by giving it the name of *expediency*, and taking advantage of the popular use of that term to contrast it with *principle*. But the *expedient*, in the sense in which it is opposed to the *right*, generally means that which is ex-

pedient for the particular interest of the agent himself; as when a minister sacrifices the interests of his country to keep himself in place. When it means anything better than this, it means that which is expedient for some immediate object, some temporary purpose, but which violates a rule whose observance is expedient in a much higher degree. The expedient, in this sense, instead of being the same thing with the useful, is a branch of the hurtful. Thus, it would often be expedient, for the purpose of getting over some momentary embarrassment, or attaining some object immediately useful to ourselves or others, to tell a lie. But inasmuch as the cultivation in ourselves of a sensitive feeling on the subject of veracity, is one of the most useful, and the enfeeblement of that feeling one of the most hurtful, things to which our conduct can be instrumental; and inasmuch as any, even unintentional, deviation from truth, does that much towards weakening the trustworthiness of human assertion, which is not only the principal support of all present social well-being, but the insufficiency of which does more than any one thing that can be named to keep back civilization, virtue, everything on which human happiness on the largest scale depends; we feel that the violation, for a present advantage, of a rule of such transcendenant expediency, is not expedient, and that he who, for the sake of a convenience to himself or to some other individual, does what depends on him to deprive mankind of the good, and inflict upon them the evil, involved in the greater or less reliance which they can place in each other's word, acts the part of one of their worst enemies. Yet that even this rule, sacred as it is, admits of possible exceptions, is acknowledged by all moralists; the chief of which is when the withholding of some fact (as of information from a malefactor, or of bad news from a person dangerously ill) would save an individual (especially an individual other than oneself) from great and unmerited evil, and when the withholding can only be effected by denial. But in order that the exception may not extend itself beyond the need, and may have the least possible effect in weakening reliance on veracity, it ought to be recognized, and, if possible, its limits defined; and if the principle of

utility is good for anything, it must be good for weighing these conflicting utilities against one another, and marking out the region within which one or the other preponderates.

Again, defenders of utility often find themselves called upon to reply to such objections as this—that there is not time, previous to action, for calculating and weighing the effects of any line of conduct on the general happiness. This is exactly as if anyone were to say that it is impossible to guide our conduct by Christianity, because there is not time, on every occasion on which anything has to be done, to read through the Old and New Testaments. The answer to the objection is that there has been ample time, namely, the whole past duration of the human species. During all that time, mankind have been learning by experience the tendencies of actions; on which experience all the prudence, as well as all the morality of life, are dependent. People talk as if the commencement of this course of experience had hitherto been put off, and as if, at the moment when some man feels tempted to meddle with the property or life of another, he had to begin considering for the first time whether murder and theft are injurious to human happiness. Even then I do not think that he would find the question very puzzling; but, at all events, the matter is now done to his hand. It is truly a whimsical supposition that, if mankind were agreed in considering utility to be the test of morality, they would remain without any agreement as to what *is* useful, and would take no measures for having their notions on the subject taught to the young, and enforced by law and opinion. There is no difficulty in proving any ethical standard whatever to work ill, if we suppose universal idiocy to be conjoined with it; but on any hypothesis short of that, mankind must by this time have acquired positive beliefs as to the effects of some actions on their happiness; and the beliefs which have thus come down are the rules of morality for the multitude, and for the philosopher until he has succeeded in finding better. That philosophers might easily do this, even now, on many subjects; that the received code of ethics is by no means of divine right; and that mankind have still much to learn as to the effects of actions on

the general happiness, I admit, or rather, earnestly maintain. The corollaries from the principle of utility, like the precepts of every practical art, admit of indefinite improvement, and, in a progressive state of the human mind, their improvement is perpetually going on. But to consider the rules of morality as improvable, is one thing; to pass over the intermediate generalizations entirely, and endeavor to test each individual action directly by the first principle, is another. It is a strange notion that the acknowledgment of a first principle is inconsistent with the admission of secondary ones. To inform a traveler respecting the place of his ultimate destination, is not to forbid the use of landmarks and direction-posts on the way. The proposition that happiness is the end and aim of morality, does not mean that no road ought to be laid down to that goal, or that persons going thither should not be advised to take one direction rather than another. Men really ought to leave off talking a kind of nonsense on this subject, which they would neither talk nor listen to on other matters of practical concernment. Nobody argues that the art of navigation is not founded on astronomy, because sailors cannot wait to calculate the Nautical Almanac. Being rational creatures, they go to sea with it ready calculated; and all rational creatures go out upon the sea of life with their minds made up on the common questions of right and wrong, as well as on many of the far more difficult questions of wise and foolish. And this, as long as foresight is a human quality, it is to be presumed they will continue to do. Whatever we adopt as the fundamental principle of morality, we require subordinate principles to apply it by; the impossibility of doing without them, being common to all systems, can afford no argument against anyone in particular; but gravely to argue as if no such secondary principles could be had, and as if mankind had remained till now, and always must remain, without drawing any general conclusions from the experience of human life, is as high a pitch, I think, as absurdity has ever reached in philosophical controversy.

The remainder of the stock arguments against utilitarianism mostly consist in laying to its charge the common in-

firmities of human nature, and the general difficulties which embarrass conscientious persons in shaping their course through life. We are told that a utilitarian will be apt to make his own particular case an exception to moral rules, and when under temptation will see a utility in the breach of a rule greater than he will see in its observance. But is utility the only creed which is able to furnish us with excuses for evil-doing, and means of cheating our own conscience? They are afforded in abundance by all doctrines which recognize as a fact in morals the existence of conflicting considerations; which all doctrines do, that have been believed by sane persons. It is not the fault of any creed, but of the complicated nature of human affairs, that rules of conduct cannot be so framed as to require no exceptions, and that hardly any kind of action can safely be laid down as either always obligatory or always condemnable. There is no ethical creed which does not temper the rigidity of its laws by giving a certain latitude, under the moral responsibility of the agent, for accommodation to peculiarities of circumstances; and under every creed, at the opening thus made, self-deception and dishonest casuistry get in. There exists no moral system under which there do not arise unequivocal cases of conflicting obligation. These are the real difficulties, the knotty points both in the theory of ethics, and in the conscientious guidance of personal conduct. They are overcome practically, with greater or with less success, according to the intellect and virtue of the individual; but it can hardly be pretended that anyone will be the less qualified for dealing with them, from possessing an ultimate standard to which conflicting rights and duties can be referred. If utility is the ultimate source of moral obligations, utility may be invoked to decide between them when their demands are incompatible. Though the application of the standard may be difficult, it is better than none at all; while in other systems, the moral laws all claiming independent authority, there is no common umpire entitled to interfere between them: their claims to precedence one over another rest on little better than sophistry, and unless determined, as they generally are, by the unacknowledged influence of con-

siderations of utility, afford a free scope for the action of personal desires and partialities. We must remember that only in these cases of conflict between secondary principles is it requisite that first principles should be appealed to. There is no case of moral obligation in which some secondary principle is not involved; and if only one, there can seldom be any real doubt which one it is, in the mind of any person by whom the principle itself is recognized.

CHAPTER III

OF THE ULTIMATE SANCTION OF THE PRINCIPLE OF UTILITY

The question is often asked, and properly so, in regard to any supposed moral standard—What is its sanction? what are the motives to obey it? or more specifically, what is the source of its obligation? whence does it derive its binding force? It is a necessary part of moral philosophy to provide the answer to this question; which, though frequently assuming the shape of an objection to the utilitarian morality, as if it had some special applicability to that above others, really arises in regard to all standards. It arises, in fact, whenever a person is called on to *adopt* a standard, or refer morality to any basis on which he has not been accustomed to rest in. For the customary morality, that which education and opinion have consecrated, is the only one which presents itself to the mind with the feeling of being *in itself* obligatory; and when a person is asked to believe that this morality *derives* its obligation from some general principle round which custom has not thrown the same halo, the assertion is to him a paradox; the supposed corollaries seem to have a more binding force than the original theorem; the superstructure seems to stand better without, than with, what is represented as its foundation. He says to himself, I feel that I am bound not to rob or murder, betray or deceive; but why am I bound to promote the general happiness? If my own happiness lies in something else, why may I not give that the preference?

If the view adopted by the utilitarian philosophy of the nature of the moral sense be correct, this difficulty will always present itself, until the influences which form moral

character have taken the same hold of the principle which they have taken of some of the consequences—until, by the improvement of education, the feeling of unity with our fellow-creatures shall be (what it cannot be denied that Christ intended it to be) as deeply rooted in our character, and to our own consciousness as completely a part of our nature, as the horror of crime is in an ordinarily well brought up young person. In the meantime, however, the difficulty has no peculiar application to the doctrine of utility, but is inherent in every attempt to analyze morality and reduce it to principles; which, unless the principle is already in men's minds invested with as much sacredness as any of its applications, always seem to divest them of a part of their sanctity.

The principle of utility either has, or there is no reason why it might not have, all the sanctions which belong to any other system of morals. Those sanctions are either external or internal. Of the external sanctions it is not necessary to speak at any length. They are, the hope of favor and the fear of displeasure, from our fellow-creatures or from the Ruler of the Universe, along with whatever we may have of sympathy or affection for them, or of love and awe of Him, inclining us to do his will independently of selfish consequences. There is evidently no reason why all these motives for observance should not attach themselves to the utilitarian morality, as completely and as powerfully as to any other. Indeed, those of them which refer to our fellow-creatures are sure to do so, in proportion to the amount of general intelligence; for whether there be any other ground of moral obligation than the general happiness or not, men do desire happiness; and however imperfect may be their own practice, they desire and commend all conduct in others towards themselves, by which they think their happiness is promoted. With regard to the religious motive, if men believe, as most profess to do, in the goodness of God, those who think that conduciveness to the general happiness is the essence, or even only the criterion of good, must necessarily believe that it is also that which God approves. The whole force therefore of external reward and punishment, whether physical or moral, and whether proceeding from

God or from our fellow men, together with all that the capacities of human nature admit of disinterested devotion to either, become available to enforce the utilitarian morality, in proportion as that morality is recognized; and the more powerfully, the more the appliances of education and general cultivation are bent to the purpose.

So far as to external sanctions. The internal sanction of duty, whatever our standard of duty may be, is one and the same—a feeling in our own mind: a pain, more or less intense, attendant on violation of duty, which in properly cultivated moral natures rises, in the more serious cases, into shrinking from it as an impossibility. This feeling, when disinterested, and connecting itself with the pure idea of duty, and not with some particular form of it, or with any of the merely accessory circumstances, is the essence of conscience; though in that complex phenomenon as it actually exists, the simple fact is in general all encrusted over with collateral associations, derived from sympathy, from love, and still more from fear; from all the forms of religious feeling; from the recollections of childhood and of all our past life; from self-esteem, desire of the esteem of others, and occasionally even self-abasement. This extreme complication is, I apprehend, the origin of the sort of mystical character which, by a tendency of the human mind of which there are many other examples, is apt to be attributed to the idea of moral obligation, and which leads people to believe that the idea cannot possibly attach itself to any other objects than those which, by a supposed mysterious law, are found in our present experience to excite it. Its binding force, however, consists in the existence of a mass of feeling which must be broken through in order to do what violates our standard of right, and which, if we do nevertheless violate that standard, will probably have to be encountered afterwards in the form of remorse. Whatever theory we have of the nature or origin of conscience, this is what essentially constitutes it.

The ultimate sanction, therefore, of all morality (external motives apart) being a subjective feeling in our own minds, I see nothing embarrassing to those whose standard is utility, in the question, what is the sanction of that particular

standard? We may answer, the same as of all other moral standards—the conscientious feelings of mankind. Undoubtedly this sanction has no binding efficacy on those who do not possess the feelings it appeals to; but neither will these persons be more obedient to any other moral principle than to the utilitarian one. On them morality of any kind has no hold but through the external sanctions. Meanwhile the feelings exist, a fact in human nature, the reality of which, and the great power with which they are capable of acting on those in whom they have been duly cultivated, are proved by experience. No reason has ever been shown why they may not be cultivated to as great intensity in connection with the utilitarian, as with any other rule of morals.

There is, I am aware, a disposition to believe that a person who sees in moral obligation a transcendental fact, an objective reality belonging to the province of 'things in themselves,' is likely to be more obedient to it than one who believes it to be entirely subjective, having its seat in human consciousness only. But whatever a person's opinion may be on this point of ontology, the force he is really urged by is his own subjective feeling, and is exactly measured by its strength. No one's belief that duty is an objective reality, is stronger than the belief that God is so; yet the belief in God, apart from the expectation of actual reward and punishment, only operates on conduct through, and in proportion to, the subjective religious feeling. The sanction, so far as it is disinterested, is always in the mind itself; and the notion therefore of the transcendental moralists must be that this sanction will not exist *in* the mind unless it is believed to have its root out of the mind; and that if a person is able to say to himself, "This which is restraining me, and which is called my conscience, is only a feeling in my own mind," he may possibly draw the conclusion that when the feeling ceases the obligation ceases, and that if he find the feeling inconvenient, he may disregard it, and endeavor to get rid of it. But is this danger confined to the utilitarian morality? Does the belief that moral obligation has its seat outside the mind make the feeling of it too strong to be got

rid of? The fact is so far otherwise, that all moralists admit and lament the ease with which, in the generality of minds, conscience can be silenced or stifled. The question, "Need I obey my conscience?" is quite as often put to themselves by persons who never heard of the principle of utility, as by its adherents. Those whose conscientious feelings are so weak as to allow of their asking this question, if they answer it affirmatively, will not do so because they believe in the transcendental theory, but because of the external sanctions.

It is not necessary, for the present purpose, to decide whether the feeling of duty is innate or implanted. Assuming it to be innate, it is an open question to what objects it naturally attaches itself; for the philosophic supporters of that theory are now agreed that the intuitive perception is of principles of morality and not of the details. If there be anything innate in the matter, I see no reason why the feeling which is innate should not be that of regard to the pleasures and pains of others. If there is any principle of morals which is intuitively obligatory, I should say it must be that. If so, the intuitive ethics would coincide with the utilitarian, and there would be no further quarrel between them. Even as it is, the intuitive moralists, though they believe that there are other intuitive moral obligations, do already believe this to be one; for they unanimously hold that a large *portion* of morality turns upon the consideration due to the interests of our fellow-creatures. Therefore, if the belief in the transcendental origin of moral obligation gives any additional efficacy to the internal sanction, it appears to me that the utilitarian principle has already the benefit of it.

On the other hand, if, as is my own belief, the moral feelings are not innate, but acquired, they are not for that reason the less natural. It is natural to man to speak, to reason, to build cities, to cultivate the ground, though these are acquired faculties. The moral feelings are not indeed a part of our nature, in the sense of being in any perceptible degree present in all of us; but this, unhappily, is a fact admitted by those who believe the most strenuously in their transcendental origin. Like the other acquired capacities above referred to, the moral faculty, if not a part of our nature, is a natural out-

growth from it; capable, like them, in a certain small degree, of springing up spontaneously; and susceptible of being brought by cultivation to a high degree of development. Unhappily it is also susceptible, by a sufficient use of the external sanctions and of the force of early impressions, of being cultivated in almost any direction; so that there is hardly anything so absurd or so mischievous that it may not, by means of these influences, be made to act on the human mind with all the authority of conscience. To doubt that the same potency might be given by the same means to the principle of utility, even if it had no foundation in human nature, would be flying in the face of all experience.

But moral associations which are wholly of artificial creation, when intellectual culture goes on, yield by degrees to the dissolving force of analysis: and if the feeling of duty, when associated with utility, would appear equally arbitrary; if there were no leading department of our nature, no powerful class of sentiments, with which that association would harmonize, which would make us feel it congenial, and incline us not only to foster it in others (for which we have abundant interested motives), but also to cherish it in ourselves; if there were not, in short, a natural basis of sentiment for utilitarian morality, it might well happen that this association also, even after it had been implanted by education, might be analyzed away.

But there *is* this basis of powerful natural sentiment; and this it is which, when once the general happiness is recognized as the ethical standard, will constitute the strength of the utilitarian morality. This firm foundation is that of the social feelings of mankind; the desire to be in unity with our fellow-creatures, which is already a powerful principle in human nature, and happily one of those which tend to become stronger, even without express inculcation, from the influences of advancing civilization. The social state is at once so natural, so necessary, and so habitual to man, that, except in some unusual circumstances or by an effort of voluntary abstraction, he never conceives himself otherwise than as a member of a body; and this association is riveted more and more as mankind are further removed from the state of savage

independence. Any condition, therefore, which is essential to a state of society, becomes more and more an inseparable part of every person's conception of the state of things which he is born into, and which is the destiny of a human being. Now, society between human beings, except in the relation of master and slave, is manifestly impossible on any other footing than that the interests of all are to be consulted. Society between equals can only exist on the understanding that the interests of all are to be regarded equally. And since in all states of civilization, every person, except an absolute monarch, has equals, everyone is obliged to live on these terms with somebody; and in every age some advance is made towards a state in which it will be impossible to live permanently on other terms with anybody. In this way people grow up unable to conceive as possible to them a state of total disregard of other people's interests. They are under a necessity of conceiving themselves as at least abstaining from all the grosser injuries, and (if only for their own protection) living in a state of constant protest against them. They are also familiar with the fact of co-operating with others, and proposing to themselves a collective, not an individual interest as the aim (at least for the time being) of their actions. So long as they are co-operating, their ends are identified with those of others; there is at least a temporary feeling that the interests of others are their own interests. Not only does all strengthening of social ties, and all healthy growth of society, give to each individual a stronger personal interest in practically consulting the welfare of others; it also leads him to identify his *feelings* more and more with their good, or at least with an even greater degree of practical consideration for it. He comes, as though instinctively, to be conscious of himself as a being who *of course* pays regard to others. The good of others becomes to him a thing naturally and necessarily to be attended to, like any of the physical conditions of our existence. Now whatever amount of this feeling a person has, he is urged by the strongest motives both of interest and of sympathy to demonstrate it, and to the utmost of his power encourage it in others; and even if he has none of it himself, he is as greatly interested as anyone else that others should have it.

Consequently the smallest germs of the feeling are laid hold of and nourished by the contagion of sympathy and the influences of education; and a complete web of corroborative association is woven round it, by the powerful agency of the external sanctions. This mode of conceiving ourselves and human life, as civilization goes on, is felt to be more and more natural. Every step in political improvement renders it more so, by removing the sources of opposition of interest, and leveling those inequalities of legal privilege between individuals or classes, owing to which there are large portions of mankind whose happiness it is still practicable to disregard. In an improving state of the human mind, the influences are constantly on the increase which tend to generate in each individual a feeling of unity with all the rest; which, if perfect, would make him never think of, or desire, any beneficial condition for himself, in the benefits of which they are not included. If we now suppose this feeling of unity to be taught as a religion, and the whole force of education, of institutions, and of opinion, directed, as it once was in the case of religion, to make every person grow up from infancy surrounded on all sides both by the profession and the practice of it, I think that no one who can realize this conception will feel any misgiving about the sufficiency of the ultimate sanction for the happiness morality. To any ethical student who finds the realization difficult, I recommend, as a means of facilitating it, the second of M. Comte's two principal works, the *Traité de politique positive*. I entertain the strongest objections to the system of politics and morals set forth in that treatise; but I think it has superabundantly shown the possibility of giving to the service of humanity, even without the aid of belief in a Providence, both the psychological power and the social efficacy of a religion; making it take hold of human life, and color all thought, feeling, and action, in a manner of which the greatest ascendancy ever exercised by any religion may be but a type and foretaste; and of which the danger is not that it should be insufficient, but that it should be so excessive as to interfere unduly with human freedom and individuality.

Neither is it necessary to the feeling which constitutes the

binding force of the utilitarian morality on those who recognize it, to wait for those social influences which would make its obligation felt by mankind at large. In the comparatively early state of human advancement in which we now live, a person cannot indeed feel that entireness of sympathy with all others, which would make any real discordance in the general direction of their conduct in life impossible; but already a person in whom the social feeling is at all developed, cannot bring himself to think of the rest of his fellow-creatures as struggling rivals with him for the means of happiness, whom he must desire to see defeated in their object in order that he may succeed in his. The deeply rooted conception which every individual even now has of himself as a social being, tends to make him feel it one of his natural wants that there should be harmony between his feelings and aims and those of his fellow-creatures. If differences of opinion and of mental culture make it impossible for him to share many of their actual feelings—perhaps make him denounce and defy those feelings—he still needs to be conscious that his real aim and theirs do not conflict; that he is not opposing himself to what they really wish for, namely their own good, but is, on the contrary, promoting it. This feeling in most individuals is much inferior in strength to their selfish feelings, and is often wanting altogether. But to those who have it, it possesses all the characters of a natural feeling. It does not present itself to their minds as a superstition of education, or a law despotically imposed by the power of society, but as an attribute which it would not be well for them to be without. This conviction is the ultimate sanction of the greatest happiness morality. This it is which makes any mind, of well-developed feelings, work with, and not against, the outward motives to care for others, afforded by what I have called the external sanctions; and when those sanctions are wanting, or act in an opposite direction, constitutes in itself a powerful internal binding force, in proportion to the sensitiveness and thoughtfulness of the character; since few but those whose mind is a moral blank, could bear to lay out their course of life on the plan of paying no regard to others except so far as their own private interest compels.

CHAPTER IV

OF WHAT SORT OF PROOF THE PRINCIPLE OF UTILITY IS SUSCEPTIBLE

It has already been remarked that questions of ultimate ends do not admit of proof, in the ordinary acceptation of the term. To be incapable of proof by reasoning is common to all first principles: to the first premises of our knowledge as well as to those of our conduct. But the former, being matters of fact, may be the subject of a direct appeal to the faculties which judge of fact—namely, our senses, and our internal consciousness. Can an appeal be made to the same faculties on questions of practical ends? Or by what other faculty is cognizance taken of them?

Questions about ends are, in other words, questions what things are desirable. The utilitarian doctrine is that happiness is desirable, and the only thing desirable, as an end; all other things being only desirable as means to that end. What ought to be required of this doctrine—what conditions is it requisite that the doctrine should fulfil—to make good its claim to be believed?

The only proof capable of being given that an object is visible, is that people actually see it. The only proof that a sound is audible, is that people hear it: and so of the other sources of our experience. In like manner, I apprehend, the sole evidence it is possible to produce that anything is desirable, is that people do actually desire it. If the end which the utilitarian doctrine proposes to itself were not, in theory and in practice, acknowledged to be an end, nothing could ever convince any person that it was so. No reason can be given why the general happiness is desirable except that each

person, so far as he believes it to be attainable, desires his own happiness. This, however, being a fact, we have not only all the proof which the case admits of, but all which it is possible to require, that happiness is a good: that each person's happiness is a good to that person, and the general happiness, therefore, a good to the aggregate of all persons. Happiness has made out its title as *one* of the ends of conduct, and consequently one of the criteria of morality.

But it has not, by this alone, proved itself to be the sole criterion. To do that, it would seem, by the same rule, necessary to show, not only that people desire happiness, but that they never desire anything else. Now it is palpable that they do desire things which, in common language, are decidedly distinguished from happiness. They desire, for example, virtue, and the absence of vice, no less really than pleasure and the absence of pain. The desire of virtue is not as universal, but it is as authentic a fact, as the desire of happiness. And hence the opponents of the utilitarian standard deem that they have a right to infer that there are other ends of human action besides happiness, and that happiness is not the standard of approbation and disapprobation.

But does the utilitarian doctrine deny that people desire virtue, or maintain that virtue is not a thing to be desired? The very reverse. It maintains not only that virtue is to be desired, but that it is to be desired disinterestedly, for itself. Whatever may be the opinion of utilitarian moralists as to the original conditions by which virtue is made virtue; however they may believe (as they do) that actions and dispositions are only virtuous because they promote another end than virtue: yet this being granted, and it having been decided, from considerations of this description, what *is* virtuous, they not only place virtue at the very head of the things which are good as means to the ultimate end, but they also recognize as a psychological fact the possibility of its being, to the individual, a good in itself, without looking to any end beyond it; and hold that the mind is not in a right state, not in a state conformable to utility, not in the state most conducive to the general happiness, unless it does love virtue in this manner—as a thing desirable in itself, even although, in the individual

instance, it should not produce those other desirable consequences which it tends to produce, and on account of which it is held to be virtue. This opinion is not, in the smallest degree, a departure from the happiness principle. The ingredients of happiness are very various, and each of them is desirable in itself, and not merely when considered as swelling an aggregate. The principle of utility does not mean that any given pleasure, as music, for instance, or any given exemption from pain, as for example health, is to be looked upon as means to a collective something termed happiness, and to be desired on that account. They are desired and desirable in and for themselves; besides being means, they are a part of the end. Virtue, according to the utilitarian doctrine, is not naturally and originally part of the end, but it is capable of becoming so; and in those who love it disinterestedly it has become so, and is desired and cherished, not as a means to happiness, but as a part of their happiness.

To illustrate this farther, we may remember that virtue is not the only thing, originally a means, and which if it were not a means to anything else, would be and remain indifferent, but which by association with what it is a means to, comes to be desired for itself, and that too with the utmost intensity. What, for example, shall we say of the love of money? There is nothing originally more desirable about money than about any heap of glittering pebbles. Its worth is solely that of the things which it will buy; the desires for other things than itself, which it is a means of gratifying. Yet the love of money is not only one of the strongest moving forces of human life, but money is, in many cases, desired in and for itself; the desire to possess it is often stronger than the desire to use it, and goes on increasing when all the desires which point to ends beyond it, to be compassed by it, are falling off. It may, then, be said truly, that money is desired not for the sake of an end, but as part of the end. From being a means to happiness, it has come to be itself a principal ingredient of the individual's conception of happiness. The same may be said of the majority of the great objects of human life—power, for example, or fame; except that to each of these there is a certain amount of immediate pleas-

ure annexed, which has at least the semblance of being naturally inherent in them; a thing which cannot be said of money. Still, however, the strongest natural attraction, both of power and of fame, is the immense aid they give to the attainment of our other wishes; and it is the strong association thus generated between them and all our objects of desire, which gives to the direct desire of them the intensity it often assumes, so as in some characters to surpass in strength all other desires. In these cases the means have become a part of the end, and a more important part of it than any of the things which they are means to. What was once desired as an instrument for the attainment of happiness, has come to be desired for its own sake. In being desired for its own sake it is, however, desired as *part* of happiness. The person is made, or thinks he would be made, happy by its mere possession; and is made unhappy by failure to obtain it. The desire of it is not a different thing from the desire of happiness, any more than the love of music, or the desire of health. They are included in happiness. They are some of the elements of which the desire of happiness is made up. Happiness is not an abstract idea, but a concrete whole; and these are some of its parts. And the utilitarian standard sanctions and approves their being so. Life would be a poor thing, very ill provided with sources of happiness, if there were not this provision of nature, by which things originally indifferent, but conducive to, or otherwise associated with, the satisfaction of our primitive desires, become in themselves sources of pleasure more valuable than the primitive pleasures, both in permanency, in the space of human existence that they are capable of covering, and even in intensity.

Virtue, according to the utilitarian conception, is a good of this description. There was no original desire of it, or motive to it, save its conduciveness to pleasure, and especially to protection from pain. But through the association thus formed, it may be felt a good in itself, and desired as such with as great intensity as any other good; and with this difference between it and the love of money, of power, or of fame, that all of these may, and often do, render the individual noxious to the other members of the society to which he be-

longs, whereas there is nothing which makes him so much a blessing to them as the cultivation of the disinterested love of virtue. And consequently, the utilitarian standard, while it tolerates and approves those other acquired desires, up to the point beyond which they would be more injurious to the general happiness than promotive of it, enjoins and requires the cultivation of the love of virtue up to the greatest strength possible, as being above all things important to the general happiness.

It results from the preceding considerations, that there is in reality nothing desired except happiness. Whatever is desired otherwise than *as a means* to some end beyond itself, and ultimately to happiness, is desired as itself a part of happiness, and is not desired for itself until it has become so. Those who desire virtue for its own sake, desire it either because the consciousness of it is a pleasure, or because the consciousness of being without it is a pain, or for both reasons united; as in truth the pleasure and pain seldom exist separately, but almost always together, the same person feeling pleasure in the degree of virtue attained, and pain in not having attained more. If one of these gave him no pleasure, and the other no pain, he would not love or desire virtue, or would desire it only for the other benefits which it might produce to himself or to persons whom he cared for.

We have now, then, an answer to the question, of what sort of proof the principle of utility is susceptible. If the opinion which I have now stated is psychologically true—if human nature is so constituted as to desire nothing which is not either a part of happiness or a means of happiness, we can have no other proof, and we require no other, that these are the only things desirable. If so, happiness is the sole end of human action, and the promotion of it the test by which to judge of all human conduct; from whence it necessarily follows that it must be the criterion of morality, since a part is included in the whole.

And now to decide whether this is really so; whether mankind do desire nothing for itself but that which is a pleasure to them, or of which the absence is a pain: we have evidently arrived at a question of fact and experience, dependent, like

all similar questions, upon evidence. It can only be determined by practiced self-consciousness and self-observation, assisted by observation of others. I believe that these sources of evidence, impartially consulted, will declare that desiring a thing and finding it pleasant, aversion to it and thinking of it as painful, are phenomena entirely inseparable, or rather two parts of the same phenomenon; in strictness of language, two different modes of naming the same psychological fact: that to think of an object as desirable (*unless for the sake of its consequences*), and to think of it as pleasant, are one and the same thing; and that to desire anything, except in proportion as the idea of it is pleasant, is a physical and metaphysical impossibility.

So obvious does this appear to me that I expect it will hardly be disputed; and the objection made will be, not that desire can possibly be directed to anything ultimately except pleasure and exemption from pain, but that the will is a different thing from desire: that a person of confirmed virtue, or any other person whose purposes are fixed, carries out his purposes without any thought of the pleasure he has in contemplating them, or expects to derive from their fulfilment; and persists in acting on them, even though these pleasures are much diminished, by changes in his character or decay of his passive sensibilities, or are outweighed by the pains which the pursuit of the purposes may bring upon him. All this I fully admit, and have stated it elsewhere, as positively and emphatically as anyone. Will, the active phenomenon, is a different thing from desire, the state of passive sensibility, and though originally an offshoot from it, may in time take root and detach itself from the parent stock; so much so, that in the case of an habitual purpose, instead of willing the thing because we desire it, we often desire it only because we will it. This, however, is but an instance of that familiar fact, the power of habit, and is nowise confined to the case of virtuous actions. Many indifferent things which men originally did from a motive of some sort, they continue to do from habit. Sometimes this is done unconsciously, the consciousness coming only after the action; at other times with conscious volition, but volition which has become habitual, and is put in

operation by the force of habit, in opposition perhaps to the deliberate preference, as often happens with those who have contracted habits of vicious or hurtful indulgence. Third and last comes the case in which the habitual act of will in the individual instance is not in contradiction to the general intention prevailing at other times, but in fulfilment of it; as in the case of the person of confirmed virtue, and of all who pursue deliberately and consistently any determinate end. The distinction between will and desire thus understood is an authentic and highly important psychological fact; but the fact consists solely in this—that will, like all other parts of our constitution, is amenable to habit, and that we may will from habit what we no longer desire for itself, or desire only because we will it. It is not the less true that will, in the beginning, is entirely produced by desire; including in that term the repelling influence of pain as well as the attractive one of pleasure. Let us take into consideration, no longer the person who has a confirmed will to do right, but him in whom that virtuous will is still feeble, conquerable by temptation, and not to be fully relied on; by what means can it be strengthened? How can the will to be virtuous, where it does not exist in sufficient force, be implanted or awakened? Only by making the person *desire* virtue—by making him think of it in a pleasurable light, or of its absence in a painful one. It is by associating the doing right with pleasure, or the doing wrong with pain, or by eliciting and impressing and bringing home to the person's experience the pleasure naturally involved in the one or the pain in the other, that it is possible to call forth that will to be virtuous, which, when confirmed, acts without any thought of either pleasure or pain. Will is the child of desire, and passes out of the dominion of its parent only to come under that of habit. That which is the result of habit affords no presumption of being intrinsically good; and there would be no reason for wishing that the purpose of virtue should become independent of pleasure and pain, were it not that the influence of the pleasurable and painful associations which prompt to virtue is not sufficiently to be depended on for unerring constancy of action until it has acquired the support of habit. Both in feeling and in con-

duct, habit is the only thing which imparts certainty; and it is because of the importance to others of being able to rely absolutely on one's feelings and conduct, and to oneself of being able to rely on one's own, that the will to do right ought to be cultivated into this habitual independence. In other words, this state of the will is a means to good, not intrinsically a good; and does not contradict the doctrine that nothing is a good to human beings but in so far as it is either itself pleasurable, or a means of attaining pleasure or averting pain.

But, if this doctrine be true, the principle of utility is proved. Whether it is so or not, must now be left to the consideration of the thoughtful reader.

CHAPTER V

ON THE CONNECTION BETWEEN JUSTICE AND UTILITY

In all ages of speculation one of the strongest obstacles to the reception of the doctrine that utility or happiness is the criterion of right and wrong, has been drawn from the idea of *justice*. The powerful sentiment, and apparently clear perception, which that word recalls with a rapidity and certainty resembling an instinct, have seemed to the majority of thinkers to point to an inherent quality in things; to show that the just must have an existence in nature as something absolute, generically distinct from every variety of the expedient, and, in idea, opposed to it, though (as is commonly acknowledged) never, in the long run, disjoined from it in fact.

In the case of this, as of our other moral sentiments, there is no necessary connection between the question of its origin, and that of its binding force. That a feeling is bestowed on us by nature, does not necessarily legitimate all its promptings. The feeling of justice might be a peculiar instinct, and might yet require, like our other instincts, to be controlled and enlightened by a higher reason. If we have intellectual instincts, leading us to judge in a particular way, as well as animal instincts that prompt us to act in a particular way, there is no necessity that the former should be more infallible in their sphere than the latter in theirs: it may as well happen that wrong judgments are occasionally suggested by those, as wrong actions by these. But though it is one thing to believe that we have natural feelings of justice, and another to acknowledge them as an ultimate criterion of conduct, these two opinions are very closely connected in point of fact. Mankind

are always predisposed to believe that any subjective feeling, not otherwise accounted for, is a revelation of some objective reality. Our present object is to determine whether the reality, to which the feeling of justice corresponds, is one which needs any such special revelation; whether the justice or injustice of an action is a thing intrinsically peculiar, and distinct from all its other qualities, or only a combination of certain of those qualities, presented under a peculiar aspect. For the purpose of this inquiry it is practically important to consider whether the feeling itself, of justice and injustice, is *sui generis* like our sensations of color and taste, or a derivative feeling, formed by a combination of others. And this it is the more essential to examine, as people are in general willing enough to allow that objectively the dictates of justice coincide with a part of the field of general expediency; but inasmuch as the subjective mental feeling of justice is different from that which commonly attaches to simple expediency, and, except in the extreme cases of the latter, is far more imperative in its demands, people find it difficult to see in justice only a particular kind or branch of general utility, and think that its superior binding force requires a totally different origin.

To throw light upon this question, it is necessary to attempt to ascertain what is the distinguishing character of justice or of injustice: what is the quality, or whether there is any quality, attributed in common to all modes of conduct designated as unjust (for justice, like many other moral attributes, is best defined by its opposite), and distinguishing them from such modes of conduct as are disapproved, but without having that particular epithet of disapprobation applied to them. If in everything which men are accustomed to characterize as just or unjust, some one common attribute or collection of attributes is always present, we may judge whether this particular attribute or combination of attributes would be capable of gathering round it a sentiment of that peculiar character and intensity by virtue of the general laws of our emotional constitution, or whether the sentiment is inexplicable, and requires to be regarded as a special provision of Nature. If we find the former to be the case, we shall, in resolving this question, have resolved also the main prob-

lem; if the latter, we shall have to seek for some other mode of investigating it.

To find the common attributes of a variety of objects, it is necessary to begin by surveying the objects themselves in the concrete. Let us therefore advert successively to the various modes of action and arrangements of human affairs which are classed, by universal or widely spread opinion, as just or as unjust. The things well known to excite the sentiments associated with those names are of a very multifarious character. I shall pass them rapidly in review, without studying any particular arrangement.

In the first place, it is mostly considered unjust to deprive anyone of his personal liberty, his property, or any other thing which belongs to him by law. Here, therefore, is one instance of the application of the terms just and unjust in a perfectly definite sense, namely, that it is just to respect, unjust to violate, the *legal rights* of anyone. But this judgment admits of several exceptions, arising from the other forms in which the notions of justice and injustice present themselves. For example, the person who suffers the deprivation may (as the phrase is) have *forfeited* the rights which he is so deprived of: a case to which we shall return presently. But also,

Secondly, the legal rights of which he is deprived, may be rights which *ought* not to have belonged to him; in other words, the law which confers on him these rights, may be a bad law. When it is so, or when (which is the same thing for our purpose) it is supposed to be so, opinions will differ as to the justice or injustice of infringing it. Some maintain that no law, however bad, ought to be disobeyed by an individual citizen; that his opposition to it, if shown at all, should only be shown in endeavoring to get it altered by competent authority. This opinion (which condemns many of the most illustrious benefactors of mankind, and would often protect pernicious institutions against the only weapons which, in the state of things existing at the time, have any chance of succeeding against them) is defended, by those who hold it, on grounds of expediency; principally on that of the importance, to the common interest of mankind, of maintaining inviolate

the sentiment of submission to law. Other persons, again, hold the directly contrary opinion, that any law, judged to be bad, may blamelessly be disobeyed, even though it be not judged to be unjust, but only inexpedient; while others would confine the license of disobedience to the case of unjust laws: but again, some say that all laws which are inexpedient are unjust; since every law imposes some restriction on the natural liberty of mankind, which restriction is an injustice, unless legitimated by tending to their good. Among these diversities of opinion, it seems to be universally admitted that there may be unjust laws, and that law, consequently, is not the ultimate criterion of justice, but may give to one person a benefit, or impose on another an evil, which justice condemns. When, however, a law is thought to be unjust, it seems always to be regarded as being so in the same way in which a breach of law is unjust, namely, by infringing somebody's right; which, as it cannot in this case be a legal right, receives a different appellation, and is called a moral right. We may say, therefore, that a second case of injustice consists in taking or withholding from any person that to which he has a *moral right*.

Thirdly, it is universally considered just that each person should obtain that (whether good or evil) which he *deserves*, and unjust that he should obtain a good, or be made to undergo an evil, which he does not deserve. This is, perhaps, the clearest and most emphatic form in which the idea of justice is conceived by the general mind. As it involves the notion of desert, the question arises, what constitutes desert? Speaking in a general way, a person is understood to deserve good if he does right, evil if he does wrong; and in a more particular sense, to deserve good from those to whom he does or has done good, and evil from those to whom he does or has done evil. The precept of returning good for evil has never been regarded as a case of the fulfilment of justice, but as one in which the claims of justice are waived, in obedience to other considerations.

Fourthly, it is confessedly unjust to *break faith* with anyone: to violate an engagement, either express or implied, or disappoint expectations raised by our own conduct, at least

if we have raised those expectations knowingly and voluntarily. Like the other obligations of justice already spoken of, this one is not regarded as absolute, but as capable of being overruled by a stronger obligation of justice on the other side; or by such conduct on the part of the person concerned as is deemed to absolve us from our obligation to him, and to constitute a *forfeiture* of the benefit which he has been led to expect.

Fifthly it is, by universal admission, inconsistent with justice to be *partial;* to show favor or preference to one person over another, in matters to which favor and preference do not properly apply. Impartiality, however, does not seem to be regarded as a duty in itself, but rather as instrumental to some other duty; for it is admitted that favor and preference are not always censurable, and indeed the cases in which they are condemned are rather the exception than the rule. A person would be more likely to be blamed than applauded for giving his family or friends no superiority in good offices over strangers, when he could do so without violating any other duty; and no one thinks it unjust to seek one person in preference to another as a friend, connection, or companion. Impartiality where rights are concerned is of course obligatory, but this is involved in the more general obligation of giving to everyone his right. A tribunal, for example, must be impartial, because it is bound to award, without regard to any other consideration, a disputed object to the one of two parties who has the right to it. There are other cases in which impartiality means, being solely influenced by desert; as with those who, in the capacity of judges, preceptors, or parents, administer reward and punishment as such. There are cases, again, in which it means, being solely influenced by consideration for the public interest; as in making a selection among candidates for a government employment. Impartiality, in short, as an obligation of justice, may be said to mean, being exclusively influenced by the considerations which it is supposed ought to influence the particular case in hand; and resisting solicitation of any motives which prompt to conduct different from what those considerations would dictate.

Nearly allied to the idea of impartiality is that of *equality;*

which often enters as a component part both into the conception of justice and into the practice of it, and, in the eyes of many persons, constitutes its essence. But in this, still more than in any other case, the notion of justice varies in different persons, and always conforms in its variations to their notion of utility. Each person maintains that equality is the dictate of justice, except where he thinks that expediency requires inequality. The justice of giving equal protection to the rights of all, is maintained by those who support the most outrageous inequality in the rights themselves. Even in slave countries it is theoretically admitted that the rights of the slave, such as they are, ought to be as sacred as those of the master; and that a tribunal which fails to enforce them with equal strictness is wanting in justice; while, at the same time, institutions which leave to the slave scarcely any rights to enforce, are not deemed unjust, because they are not deemed inexpedient. Those who think that utility requires distinctions of rank, do not consider it unjust that riches and social privileges should be unequally dispensed; but those who think this inequality inexpedient, think it unjust also. Whoever thinks that government is necessary, sees no injustice in as much inequality as is constituted by giving to the magistrate powers not granted to other people. Even among those who hold leveling doctrines, there are as many questions of justice as there are differences of opinion about expediency. Some communists consider it unjust that the produce of the labor of the community should be shared on any other principle than that of exact equality; others think it just that those should receive most whose wants are greatest; while others hold that those who work harder, or who produce more, or whose services are more valuable to the community, may justly claim a larger quota in the division of the produce. And the sense of natural justice may be plausibly appealed to in behalf of every one of these opinions.

Among so many diverse applications of the term "justice," which yet is not regarded as ambiguous, it is a matter of some difficulty to seize the mental link which holds them together, and on which the moral sentiment adhering to the term essentially depends. Perhaps, in this embarrassment, some help

may be derived from the history of the word, as indicated by its etymology.

In most, if not in all, languages, the etymology of the word which corresponds to 'just,' points distinctly to an origin connected with the ordinances of law. *Justum* is a form of *jussum*, that which has been ordered. *Dikaion* comes directly from *dikē*, a suit at law. *Recht*, from which came *right* and *righteous*, is synonymous with law. The courts of justice, the administration of justice, are the courts and the administration of law. *La justice*, in French, is the established term for judicature. I am not committing the fallacy imputed with some show of truth to Horne Tooke, of assuming that a word must still continue to mean what it originally meant. Etymology is slight evidence of what the idea now signified is, but the very best evidence of how it sprang up. There can, I think, be no doubt that the *idée mère*, the primitive element, in the formation of the notion of justice, was conformity to law. It constituted the entire idea among the Hebrews, up to the birth of Christianity; as might be expected in the case of a people whose laws attempted to embrace all subjects on which precepts were required, and who believed those laws to be a direct emanation from the Supreme Being. But other nations, and in particular the Greeks and Romans, who knew that their laws had been made originally, and still continued to be made, by men, were not afraid to admit that those men might make bad laws: might do, by law, the same things, and from the same motives, which if done by individuals without the sanction of law, would be called unjust. And hence the sentiment of injustice came to be attached, not to all violations of law, but only to violations of such laws as *ought* to exist, including such as ought to exist, but do not; and to laws themselves, if supposed to be contrary to what ought to be law. In this manner the idea of law and of its injunctions was still predominant in the notion of justice, even when the laws actually in force ceased to be accepted as the standard of it.

It is true that mankind consider the idea of justice and its obligations as applicable to many things which neither are, nor is it desired that they should be, regulated by law. No-

body desires that laws should interfere with the whole detail of private life; yet everyone allows that in all daily conduct a person may and does show himself to be either just or unjust. But even here, the idea of the breach of what ought to be law, still lingers in a modified shape. It would always give us pleasure, and chime in with our feelings of fitness, that acts which we deem unjust should be punished, though we do not always think it expedient that this should be done by the tribunals. We forego that gratification on account of incidental inconveniences. We should be glad to see just conduct enforced and injustice repressed, even in the minutest details, if we were not, with reason, afraid of trusting the magistrate with so unlimited an amount of power over individuals. When we think that a person is bound in justice to do a thing, it is an ordinary form of language to say that he ought to be compelled to do it. We should be gratified to see the obligation enforced by anybody who had the power. If we see that its enforcement by law would be inexpedient, we lament the impossibility, we consider the impunity given to injustice as an evil, and strive to make amends for it by bringing a strong expression of our own and the public disapprobation to bear upon the offender. Thus the idea of legal constraint is still the generating idea of the notion of justice, though undergoing several transformations before that notion, as it exists in an advanced state of society, becomes complete.

The above is, I think, a true account, as far as it goes, of the origin and progressive growth of the idea of justice. But we must observe that it contains as yet nothing to distinguish that obligation from moral obligation in general. For the truth is, that the idea of penal sanction, which is the essence of law, enters not only into the conception of injustice, but into that of any kind of wrong. We do not call anything wrong unless we mean to imply that a person ought to be punished in some way or other for doing it: if not by law, by the opinion of his fellow-creatures; if not by opinion, by the reproaches of his own conscience. This seems the real turning point of the distinction between morality and simple expediency. It is a part of the notion of duty in every one of

its forms, that a person may rightfully be compelled to fulfil it. Duty is a thing which may be *exacted* from a person, as one exacts a debt. Unless we think that it may be exacted from him, we do not call it his duty. Reasons of prudence, or the interest of other people, may militate against actually exacting it; but the person himself, it is clearly understood, would not be entitled to complain. There are other things, on the contrary, which we wish that people should do, which we like or admire them for doing, perhaps dislike or despise them for not doing, but yet admit that they are not bound to do it: it is not a case of moral obligation; we do not blame them, that is, we do not think that they are proper objects of punishment. How we come by these ideas of deserving and not deserving punishment, will appear, perhaps, in the sequel; but I think there is no doubt that this distinction lies at the bottom of the notions of right and wrong: that we call any conduct wrong, or employ, instead, some other term of dislike or disparagement, according as we think that the person ought, or ought not, to be punished for it; and we say, it would be right to do so and so, or merely that it would be desirable or laudable, according as we would wish to see the person whom it concerns, compelled, or only persuaded and exhorted, to act in that manner.[2]

This, therefore, being the characteristic difference which marks off, not justice, but morality in general, from the remaining provinces of expediency and worthiness; the character is still to be sought which distinguishes justice from other branches of morality. Now it is known that ethical writers divide moral duties into two classes, denoted by the ill-chosen expressions, duties of perfect and of imperfect obligation; the latter being those in which, though the act is obligatory, the particular occasions of performing it are left to our choice—as in the case of charity or beneficence, which we are indeed bound to practice, but not towards any definite person, nor at any prescribed time. In the more precise language of philosophic jurists, duties of perfect obligation are those duties in virtue of which a correlative *right* resides in some person or persons; duties of imperfect obligation are those moral obligations which do not give birth to any right. I think it will be

found that this distinction exactly coincides with that which exists between justice and the other obligations of morality. In our survey of the various popular acceptations of justice, the term appeared generally to involve the idea of a personal right—a claim on the part of one or more individuals, like that which the law gives when it confers a proprietary or other legal right. Whether the injustice consists in depriving a person of a possession, or in breaking faith with him, or in treating him worse than he deserves, or worse than other people who have no greater claims, in each case the supposition implies two things—a wrong done, and some assignable person who is wronged. Injustice may also be done by treating a person better than others; but the wrong in this case is to his competitors, who are also assignable persons. It seems to me that this feature in the case—a right in some person, correlative to the moral obligation—constitutes the specific difference between justice, and generosity or beneficence. Justice implies something which is not only right to do, and wrong not to do, but which some individual person can claim from us as his moral right. No one has a moral right to our generosity or beneficence, because we are not morally bound to practice those virtues towards any given individual. And it will be found with respect to this as to every correct definition, that the instances which seem to conflict with it are those which most confirm it. For if a moralist attempts, as some have done, to make out that mankind generally, though not any given individual, have a right to all the good we can do them, he at once, by that thesis, includes generosity and beneficence within the category of justice. He is obliged to say that our utmost exertions are *due* to our fellow-creatures, thus assimilating them to a debt; or that nothing less can be a sufficient *return* for what society does for us, thus classing the case as one of gratitude; both of which are acknowledged cases of justice. Whenever there is a right, the case is one of justice, and not of the virtue of beneficence; and whoever does not place the distinction between justice and morality in general, where we have now placed it, will be found to make no distinction between them at all, but to merge all morality in justice.

Having thus endeavored to determine the distinctive elements which enter into the composition of the idea of justice, we are ready to enter on the inquiry, whether the feeling which accompanies the idea is attached to it by a special dispensation of nature, or whether it could have grown up, by any known laws, out of the idea itself; and in particular, whether it can have originated in considerations of general expediency.

I conceive that the sentiment itself does not arise from anything which would commonly, or correctly, be termed an idea of expediency; but that though the sentiment does not, whatever is moral in it does.

We have seen that the two essential ingredients in the sentiment of justice are, the desire to punish a person who has done harm, and the knowledge or belief that there is some definite individual or individuals to whom harm has been done.

Now it appears to me, that the desire to punish a person who has done harm to some individual is a spontaneous outgrowth from two sentiments, both in the highest degree natural, and which either are or resemble instincts: the impulse of self-defense and the feeling of sympathy.

It is natural to resent, and to repel or retaliate, any harm done or attempted against ourselves, or against those with whom we sympathize. The origin of this sentiment it is not necessary here to discuss. Whether it be an instinct or a result of intelligence, it is, we know, common to all animal nature; for every animal tries to hurt those who have hurt, or who it thinks are about to hurt, itself or its young. Human beings, on this point, only differ from other animals in two particulars. First, in being capable of sympathizing, not solely with their offspring, or, like some of the more noble animals, with some superior animal who is kind to them, but with all human, and even with all sentient, beings. Secondly, in having a more developed intelligence, which gives a wider range to the whole of their sentiments, whether self-regarding or sympathetic. By virtue of his superior intelligence, even apart from his superior range of sympathy, a human being is capable of apprehending a community of interest between himself

and the human society of which he forms a part, such that any conduct which threatens the security of the society generally, is threatening to his own, and calls forth his instinct (if instinct it be) of self-defense. The same superiority of intelligence, joined to the power of sympathizing with human beings generally, enables him to attach himself to the collective idea of his tribe, his country, or mankind, in such a manner that any act hurtful to them, raises his instinct of sympathy, and urges him to resistance.

The sentiment of justice, in that one of its elements which consists of the desire to punish, is thus, I conceive, the natural feeling of retaliation or vengeance, rendered by intellect and sympathy applicable to those injuries, that is, to those hurts, which wound us through, or in common with, society at large. This sentiment, in itself, has nothing moral in it; what is moral is the exclusive subordination of it to the social sympathies, so as to wait on and obey their call. For the natural feeling would make us resent indiscriminately whatever anyone does that is disagreeable to us, but when moralized by the social feeling it only acts in the directions conformable to the general good: just persons resenting a hurt to society though not otherwise a hurt to themselves, and not resenting a hurt to themselves, however painful, unless it be of the kind which society has a common interest with them in the repression of.

It is no objection against this doctrine to say that when we feel our sentiment of justice outraged, we are not thinking of society at large, or of any collective interest, but only of the individual case. It is common enough certainly, though the reverse of commendable, to feel resentment merely because we have suffered pain; but a person whose resentment is really a moral feeling, that is, who considers whether an act is blamable before he allows himself to resent it—such a person, though he may not say expressly to himself that he is standing up for the interest of society, certainly does feel that he is asserting a rule which is for the benefit of others as well as for his own. If he is not feeling this—if he is regarding the act solely as it affects him individually—he is not consciously just; he is not concerning himself about the justice of his actions. This is admitted even by anti-utilitarian moralists.

When Kant (as before remarked) propounds as the fundamental principle of morals, "So act, that thy rule of conduct might be adopted as a law by all rational beings," he virtually acknowledges that the interest of mankind collectively, or at least of mankind indiscriminately, must be in the mind of the agent when conscientiously deciding on the morality of the act. Otherwise he uses words without a meaning; for that a rule even of utter selfishness could not *possibly* be adopted by all rational beings—that there is any insuperable obstacle in the nature of things to its adoption—cannot be even plausibly maintained. To give any meaning to Kant's principle, the sense put upon it must be, that we ought to shape our conduct by a rule which all rational beings might adopt *with benefit to their collective interest.*

To recapitulate: the idea of justice supposes two things—a rule of conduct and a sentiment which sanctions the rule. The first must be supposed common to all mankind and intended for their good. The other (the sentiment) is a desire that punishment may be suffered by those who infringe the rule. There is involved, in addition, the conception of some definite person who suffers by the infringement; whose rights (to use the expression appropriated to the case) are violated by it. And the sentiment of justice appears to me to be the animal desire to repel or retaliate a hurt or damage to oneself, or to those with whom one sympathizes, widened so as to include all persons, by the human capacity of enlarged sympathy and the human conception of intelligent self-interest. From the latter elements, the feeling derives its morality; from the former, its peculiar impressiveness and energy of self-assertion.

I have throughout treated the idea of a *right* residing in the injured person, and violated by the injury, not as a separate element in the composition of the idea and sentiment, but as one of the forms in which the other two elements clothe themselves. These elements are: a hurt to some assignable person or persons on the one hand, and a demand for punishment on the other. An examination of our own minds, I think, will show that these two things include all that we mean when we speak of violation of a right. When we

call anything a person's right, we mean that he has a valid claim on society to protect him in the possession of it, either by the force of law, or by that of education and opinion. If he has what we consider a sufficient claim, on whatever account, to have something guaranteed to him by society, we say that he has a right to it. If we desire to prove that anything does not belong to him by right, we think this done as soon as it is admitted that society ought not to take measures for securing it to him, but should leave him to chance, or to his own exertions. Thus a person is said to have a right to what he can earn in fair professional competition, because society ought not to allow any other person to hinder him from endeavoring to earn in that manner as much as he can. But he has not a right to three hundred a year, though he may happen to be earning it; because society is not called on to provide that he shall earn that sum. On the contrary, if he owns ten thousand pounds three per cent stock, he *has* a right to three hundred a year; because society has come under an obligation to provide him with an income of that amount.

To have a right, then, is, I conceive, to have something which society ought to defend me in the possession of. If the objector goes on to ask why it ought, I can give him no other reason than general utility. If that expression does not seem to convey a sufficient feeling of the strength of the obligation, nor to account for the peculiar energy of the feeling, it is because there goes to the composition of the sentiment, not a rational only, but also an animal element, the thirst for retaliation; and this thirst derives its intensity, as well as its moral justification, from the extraordinarily important and impressive kind of utility which is concerned. The interest involved is that of security, to everyone's feelings the most vital of all interests. All other earthly benefits are needed by one person, not needed by another; and many of them can, if necessary, be cheerfully foregone, or replaced by something else; but security no human being can possibly do without; on it we depend for all our immunity from evil, and for the whole value of all and every good beyond the passing moment; since nothing but the gratification of the instant could be of any worth to us, if we could be deprived of anything the next in-

stant by whoever was momentarily stronger than ourselves. Now this most indispensable of all necessaries after physical nutriment, cannot be had unless the machinery for providing it is kept unintermittedly in active play. Our notion, therefore, of the claim we have on our fellow-creatures to join in making safe for us the very groundwork of our existence, gathers feelings around it so much more intense than those concerned in any of the more common cases of utility, that the difference in degree (as is often the case in psychology) becomes a real difference in kind. The claim assumes that character of absoluteness, that apparent infinity, and incommensurability with all other considerations, which constitute the distinction between the feeling of right and wrong and that of ordinary expediency and inexpediency. The feelings concerned are so powerful, and we count so positively on finding a responsive feeling in others (all being alike interested), that *ought* and *should* grow into *must*, and recognized indispensability becomes a moral necessity, analogous to physical, and often not inferior to it in binding force.

If the preceding analysis, or something resembling it, be not the correct account of the notion of justice; if justice be totally independent of utility, and be a standard *per se*, which the mind can recognize by simple introspection of itself; it is hard to understand why that internal oracle is so ambiguous, and why so many things appear either just or unjust, according to the light in which they are regarded.

We are continually informed that utility is an uncertain standard, which every different person interprets differently, and that there is no safety but in the immutable, ineffaceable, and unmistakable dictates of justice, which carry their evidence in themselves, and are independent of the fluctuations of opinion. One would suppose from this that on questions of justice there could be no controversy; that if we take that for our rule, its application to any given case could leave us in as little doubt as a mathematical demonstration. So far is this from being the fact, that there is as much difference of opinion and as much discussion about what is just, as about what is useful to society. Not only have different nations and indi-

viduals different notions of justice, but in the mind of one and the same individual, justice is not some one rule, principle, or maxim, but many, which do not always coincide in their dictates, and in choosing between which he is guided either by some extraneous standard or by his own personal predilections.

For instance, there are some who say that it is unjust to punish anyone for the sake of example to others; that punishment is just only when intended for the good of the sufferer himself. Others maintain the extreme reverse, contending that to punish persons who have attained years of discretion, for their own benefit, is despotism and injustice, since if the matter at issue is solely their own good, no one has a right to control their own judgment of it; but that they may justly be punished to prevent evil to others, this being the exercise of the legitimate right of self-defense. Mr. Owen, again, affirms that it is unjust to punish at all; for the criminal did not make his own character; his education, and the circumstances which surrounded him, have made him a criminal, and for these he is not responsible. All these opinions are extremely plausible; and so long as the question is argued as one of justice simply, without going down to the principles which lie under justice and are the source of its authority, I am unable to see how any of these reasoners can be refuted. For in truth every one of the three builds upon rules of justice confessedly true. The first appeals to the acknowledged injustice of singling out an individual, and making him a sacrifice, without his consent, for other people's benefit. The second relies on the acknowledged justice of self-defense, and the admitted injustice of forcing one person to conform to another's notions of what constitutes his good. The Owenite invokes the admitted principle that it is unjust to punish anyone for what he cannot help. Each is triumphant so long as he is not compelled to take into consideration any other maxims of justice than the one he has selected; but as soon as their several maxims are brought face to face, each disputant seems to have exactly as much to say for himself as the others. No one of them can carry out his own notion of justice without trampling upon another equally binding. These are difficulties;

they have always been felt to be such; and many devices have been invented to turn rather than to overcome them. As a refuge from the last of the three, men imagined what they called the freedom of the will; fancying that they could not justify punishing a man whose will is in a thoroughly hateful state, unless it be supposed to have come into that state through no influence of anterior circumstances. To escape from the other difficulties, a favorite contrivance has been the fiction of a contract, whereby at some unknown period all the members of society engaged to obey the laws, and consented to be punished for any disobedience to them; thereby giving to their legislators the right, which it is assumed they would not otherwise have had, of punishing them, either for their own good or for that of society. This happy thought was considered to get rid of the whole difficulty, and to legitimate the infliction of punishment, in virtue of another received maximum of justice, *Volenti non fit injuria*—that is not unjust which is done with the consent of the person who is supposed to be hurt by it. I need hardly remark that even if the consent were not a mere fiction, this maxim is not superior in authority to the others which it is brought in to supersede. It is, on the contrary, an instructive specimen of the loose and irregular manner in which supposed principles of justice grow up. This particular one evidently came into use as a help to the coarse exigencies of courts of law, which are sometimes obliged to be content with very uncertain presumptions, on account of the greater evils which would often arise from any attempt on their part to cut finer. But even courts of law are not able to adhere consistently to the maxim, for they allow voluntary engagements to be set aside on the ground of fraud, and sometimes on that of mere mistake or misinformation.

Again, when the legitimacy of inflicting punishment is admitted, how many conflicting conceptions of justice come to light in discussing the proper apportionment of punishments to offenses. No rule on the subject recommends itself so strongly to the primitive and spontaneous sentiment of justice as the *lex talionis*, an eye for an eye and a tooth for a tooth. Though this principle of the Jewish and of the Mohammedan law has been generally abandoned in Europe as a prac-

tical maxim, there is, I suspect, in most minds, a secret hankering after it; and when retribution accidentally falls on an offender in that precise shape, the general feeling of satisfaction evinced bears witness how natural is the sentiment to which this repayment in kind is acceptable. With many, the test of justice in penal infliction is that the punishment should be proportioned to the offense; meaning that it should be exactly measured by the moral guilt of the culprit (whatever be their standard for measuring moral guilt)—the consideration, what amount of punishment is necessary to deter from the offense, having nothing to do with the question of justice, in their estimation; while there are others to whom that consideration is all in all—who maintain that it is not just, at least for man, to inflict on a fellow-creature, whatever may be his offenses, any amount of suffering beyond the least that will suffice to prevent him from repeating, and others from imitating, his misconduct.

To take another example from a subject already once referred to. In a co-operative industrial association, is it just or not that talent or skill should give a title to superior remuneration? On the negative side of the question it is argued that whoever does the best he can, deserves equally well, and ought not in justice to be put in a position of inferiority for no fault of his own; that superior abilities have already advantages more than enough, in the admiration they excite, the personal influence they command, and the internal sources of satisfaction attending them, without adding to these a superior share of the world's goods; and that society is bound in justice rather to make compensation to the less favored for this unmerited inequality of advantages, than to aggravate it. On the contrary side it is contended that society receives more from the more efficient laborer; that his services being more useful, society owes him a larger return for them; that a greater share of the joint result is actually his work, and not to allow his claim to it is a kind of robbery; that if he is only to receive as much as others, he can only be justly required to produce as much, and to give a smaller amount of time and exertion, proportioned to his superior efficiency. Who shall decide between these appeals to conflicting principles of jus-

tice? Justice has in this case two sides to it, which it is impossible to bring into harmony, and the two disputants have chosen opposite sides; the one looks to what it is just that the individual should receive, the other to what it is just that the community should give. Each, from his own point of view, is unanswerable; and any choice between them, on grounds of justice, must be perfectly arbitrary. Social utility alone can decide the preference.

How many, again, and how irreconcilable, are the standards of justice to which reference is made in discussing the repartition of taxation. One opinion is, that payment to the State should be in numerical proportion to pecuniary means. Others think that justice dictates what they term graduated taxation; taking a higher percentage from those who have more to spare. In point of natural justice a strong case might be made for disregarding means altogether, and taking the same absolute sum (whenever it could be got) from everyone—as the subscribers to a mess, or to a club, all pay the same sum for the same privileges, whether they can all equally afford it or not. Since the protection (it might be said) of law and government is afforded to, and is equally required by all, there is no injustice in making all buy it at the same price. It is reckoned justice, not injustice, that a dealer should charge to all customers the same price for the same article, not a price varying according to their means of payment. This doctrine, as applied to taxation, finds no advocates, because it conflicts so strongly with man's feelings of humanity and of social expediency; but the principle of justice which it invokes is as true and as binding as those which can be appealed to against it. Accordingly it exerts a tacit influence on the line of defense employed for other modes of assessing taxation. People feel obliged to argue that the State does more for the rich than for the poor, as a justification for its taking more from them: though this is in reality not true, for the rich would be far better able to protect themselves, in the absence of law or government, than the poor, and indeed would probably be successful in converting the poor into their slaves. Others, again, so far defer to the same conception of justice, as to maintain that all should pay an equal capitation tax for

the protection of their persons (these being of equal value to all), and an unequal tax for the protection of their property, which is unequal. To this others reply that the all of one man is as valuable to him as the all of another. From these confusions there is no other mode of extrication than the utilitarian.

Is, then, the difference between the just and the expedient a merely imaginary distinction? Have mankind been under a delusion in thinking that justice is a more sacred thing than policy, and that the latter ought only to be listened to after the former has been satisfied? By no means. The exposition we have given of the nature and origin of the sentiment, recognizes a real distinction; and no one of those who profess the most sublime contempt for the consequences of actions as an element in their morality, attaches more importance to the distinction than I do. While I dispute the pretensions of any theory which sets up an imaginary standard of justice not grounded on utility, I account the justice which is grounded on utility to be the chief part, and incomparably the most sacred and binding part, of all morality. Justice is a name for certain classes of moral rules which concern the essentials of human well-being more nearly, and are therefore of more absolute obligation, than any other rules for the guidance of life; and the notion which we have found to be of the essence of the idea of justice, that of a right residing in an individual, implies and testifies to this more binding obligation.

The moral rules which forbid mankind to hurt one another (in which we must never forget to include wrongful interference with each other's freedom) are more vital to human well-being than any maxims, however important, which only point out the best mode of managing some department of human affairs. They have also the peculiarity, that they are the main element in determining the whole of the social feelings of mankind. It is their observance which alone preserves peace among human beings: if obedience to them were not the rule, and disobedience the exception, everyone would see in everyone else an enemy, against whom he must be perpetually guarding himself. What is hardly less impor-

tant, these are the precepts which mankind have the strongest and the most direct inducements for impressing upon one another. By merely giving to each other prudential instruction or exhortation, they may gain, or think they gain, nothing; in inculcating on each other the duty of positive beneficence they have an unmistakable interest, but far less in degree: a person may possibly not need the benefits of others, but he always needs that they should not do him hurt. Thus the moralities which protect every individual from being harmed by others, either directly or by being hindered in his freedom of pursuing his own good, are at once those which he himself has most at heart, and those which he has the strongest interest in publishing and enforcing by word and deed. It is by a person's observance of these that his fitness to exist as one of the fellowship of human beings is tested and decided; for on that depends his being a nuisance or not to those with whom he is in contact. Now it is these moralities primarily which compose the obligations of justice. The most marked cases of injustice, and those which give the tone to the feeling of repugnance which characterizes the sentiment, are acts of wrongful aggression, or wrongful exercise of power over someone; the next are those which consist in wrongfully withholding from him something which is his due: in both cases, inflicting on him a positive hurt, either in the form of direct suffering, or of the privation of some good which he had reasonable ground, either of a physical or of a social kind, for counting upon.

The same powerful motives which command the observance of these primary moralities, enjoin the punishment of those who violate them, and as the impulses of self-defense, of defense of others, and of vengeance, are all called forth against such persons, retribution, or evil for evil, becomes closely connected with the sentiment of justice, and is universally included in the idea. Good for good is also one of the dictates of justice; and this, though its social utility is evident, and though it carries with it a natural human feeling, has not at first sight that obvious connection with hurt or injury, which, existing in the most elementary cases of just and unjust, is the source of the characteristic intensity of the sentiment.

But the connection, though less obvious, is not less real. He who accepts benefits, and denies a return of them when needed, inflicts a real hurt, by disappointing one of the most natural and reasonable of expectations, and one which he must at least tacitly have encouraged, otherwise the benefits would seldom have been conferred. The important rank, among human evils and wrongs, of the disappointment of expectation, is shown in the fact that it constitutes the principal criminality of two such highly immoral acts as a breach of friendship and a breach of promise. Few hurts which human beings can sustain are greater, and none wound more, than when that on which they habitually and with full assurance relied, fails them in the hour of need; and few wrongs are greater than this mere withholding of good; none excite more resentment, either in the person suffering, or in a sympathizing spectator. The principle, therefore, of giving to each what they deserve, that is, good for good as well as evil for evil, is not only included within the idea of justice as we have defined it, but is a proper object of that intensity of sentiment, which places the just, in human estimation, above the simply expedient.

Most of the maxims of justice current in the world, and commonly appealed to in its transactions, are simply instrumental to carrying into effect the principles of justice which we have now spoken of. That a person is only responsible for what he has done voluntarily, or could voluntarily have avoided, that it is unjust to condemn any person unheard, that the punishment ought to be proportioned to the offense, and the like, are maxims intended to prevent the just principle of evil for evil from being perverted to the infliction of evil without that justification. The greater part of these common maxims have come into use from the practice of courts of justice, which have been naturally led to a more complete recognition and elaboration than was likely to suggest itself to others, of the rules necessary to enable them to fulfil their double function, of inflicting punishment when due, and of awarding to each person his right.

That first of judicial virtues, impartiality, is an obligation of justice, partly for the reason last mentioned, as being a

necessary condition of the fulfilment of the other obligations of justice. But this is not the only source of the exalted rank, among human obligations, of those maxims of equality and impartiality which, both in popular estimation and in that of the most enlightened, are included among the precepts of justice. In one point of view, they may be considered as corollaries from the principles already laid down. If it is a duty to do to each according to his deserts, returning good for good as well as repressing evil by evil, it necessarily follows that we should treat all equally well (when no higher duty forbids) who have deserved equally well of *us*, and that society should treat all equally well who have deserved equally well of *it*, that is, who have deserved equally well absolutely. This is the highest abstract standard of social and distributive justice; towards which all institutions, and the efforts of all virtuous citizens, should be made in the utmost possible degree to converge. But this great moral duty rests upon a still deeper foundation, being a direct emanation from the first principle of morals, and not a mere logical corollary from secondary or derivative doctrines. It is involved in the very meaning of utility, or the greatest happiness principle. That principle is a mere form of words without rational signification, unless one person's happiness, supposed equal in degree (with the proper allowance made for kind), is counted for exactly as much as another's. Those conditions being supplied, Bentham's dictum, "everybody to count for one, nobody for more than one," might be written under the principle of utility as an explanatory commentary.[8] The equal claim of everybody to happiness in the estimation of the moralist and of the legislator, involves an equal claim to all the means of happiness, except in so far as the inevitable conditions of human life, and the general interest, in which that of every individual is included, set limits to the maxim; and those limits ought to be strictly construed. As every other maxim of justice, so this is by no means applied or held applicable universally; on the contrary, as I have already remarked, it bends to every person's ideas of social expediency. But in whatever case it is deemed applicable at all, it is held to be the dictate of justice. All persons are deemed to have a *right* to equality of

treatment, except when some recognized social expediency requires the reverse. And hence all social inequalities which have ceased to be considered expedient, assume the character not of simple inexpediency, but of injustice, and appear so tyrannical, that people are apt to wonder how they ever could have been tolerated; forgetful that they themselves perhaps tolerate other inequalities under an equally mistaken notion of expediency, the correction of which would make that which they approve seem quite as monstrous as what they have at last learnt to condemn. The entire history of social improvement has been a series of transitions, by which one custom or institution after another, from being a supposed primary necessity of social existence, has passed into the rank of a universally stigmatized injustice and tyranny. So it has been with the distinctions of slaves and freemen, nobles and serfs, patricians and plebeians; and so it will be, and in part already is, with the aristocracies of color, race, and sex.

It appears from what has been said that justice is a name for certain moral requirements which, regarded collectively, stand higher in the scale of social utility, and are therefore of more paramount obligation, than any others; though particular cases may occur in which some other social duty is so important, as to overrule any one of the general maxims of justice. Thus, to save a life, it may not only be allowable but a duty to steal or take by force the necessary food or medicine, or to kidnap and compel to officiate the only qualified medical practitioner. In such cases, as we do not call anything justice which is not a virtue; we usually say, not that justice must give way to some other moral principle, but that what is just in ordinary cases is, by reason of that other principle, not just in the particular case. By this useful accommodation of language, the character of indefeasibility attributed to justice is kept up, and we are saved from the necessity of maintaining that there can be laudable injustice.

The considerations which have now been adduced resolve, I conceive, the only real difficulty in the utilitarian theory of morals. It has always been evident that all cases of justice are also cases of expediency: the difference is in the peculiar sentiment which attaches to the former, as contradistinguished

from the latter. If this characteristic sentiment has been sufficiently accounted for; if there is no necessity to assume for it any peculiarity of origin; if it is simply the natural feeling of resentment, moralized by being made coextensive with the demands of social good; and if this feeling not only does but ought to exist in all the classes of cases to which the idea of justice corresponds: that idea no longer presents itself as a stumbling-block to the utilitarian ethics. Justice remains the appropriate name for certain social utilities which are vastly more important, and therefore more absolute and imperative, than any others are as a class (though not more so than others may be in particular cases); and which, therefore, ought to be, as well as naturally are, guarded by a sentiment not only different in degree, but also in kind; distinguished from the milder feeling which attaches to the mere idea of promoting human pleasure or convenience, at once by the more definite nature of its commands, and by the sterner character of its sanctions.

NOTES

[1] The author of this essay has reason for believing himself to be the first person who brought the word 'utilitarian' into use. He did not invent it, but adopted it from a passing expression in Mr. Galt's *Annals of the Parish*. After using it as a designation for several years, he and others abandoned it from a growing dislike to anything resembling a badge or watchword of sectarian distinction. But as a name for one single opinion, not a set of opinions—to denote the recognition of utility as a standard, not any particular way of applying it—the term supplies a want in the language, and offers, in many cases, a convenient mode of avoiding tiresome circumlocution.

[2] See this point enforced and illustrated by Professor Bain, in an admirable chapter (entitled "The Ethical Emotions, or the Moral Sense"), of the second of the two treatises composing his elaborate and profound work of the Mind.

[3] This implication, in the first principle of the utilitarian scheme, of perfect impartiality between persons, is regarded by Mr. Herbert Spencer (in his *Social Statics*) as a disproof of the pretensions of utility to be a sufficient guide to right; since (he says) the principle of utility presupposes the anterior principle, that everybody has an equal right to happiness. It may be more correctly described as supposing that equal amounts of happiness are equally desirable, whether felt by the same or by different persons. This, however, is not a *pre*-supposition, not a premise needful to support the principle of utility, but the very principle itself; for what is the principle

of utility, if it be not that 'happiness' and 'desirable' are synonymous terms? If there is any anterior principle implied, it can be no other than this, that the truths of arithmetic are applicable to the valuation of happiness, as of all other measurable quantities.

(Mr. Herbert Spencer, in a private communication on the subject of the preceding Note, objects to being considered an opponent of utilitarianism, and states that he regards happiness as the ultimate end of morality; but deems that end only partially attainable by empirical generalizations from the observed results of conduct, and completely attainable only by deducing, from the laws of life and the conditions of existence, what kinds of action necessarily tend to produce happiness, and what kinds to produce unhappiness. With the exception of the word 'necessarily,' I have no dissent to express from this doctrine; and (omitting that word) I am not aware that any modern advocate of utilitarianism is of a different opinion. Bentham, certainly, to whom in the *Social Statics* Mr. Spencer particularly referred, is, least of all writers, chargeable with unwillingness to deduce the effect of actions on happiness from the laws of human nature and the universal conditions of human life. The common charge against him is of relying too exclusively upon such deductions, and declining altogether to be bound by the generalizations from specific experience which Mr. Spencer thinks that utilitarians generally confine themselves to. My own opinion [and, as I recollect, Mr. Spencer's] is, that in ethics, as in all other branches of scientific study, the consilience of the results of both these processes, each corroborating and verifying the other, is requisite to give to any general proposition the kind and degree of evidence which constitutes scientific proof.)

ON LIBERTY

The grand, leading principle, towards which every argument unfolded in these pages directly converges, is the absolute and essential importance of human development in its richest diversity.

—WILHELM VON HUMBOLDT:
Sphere and Duties of Government.

To the beloved and deplored memory of her who was the inspirer, and in part the author, of all that is best in my writings—the friend and wife whose exalted sense of truth and right was my strongest incitement, and whose approbation was my chief reward—I dedicate this volume. Like all that I have written for many years, it belongs as much to her as to me; but the work as it stands has had, in a very insufficient degree, the inestimable advantage of her revision; some of the most important portions having been reserved for a more careful re-examination, which they are now never destined to receive. Were I but capable of interpreting to the world one half the great thoughts and noble feelings which are buried in her grave, I should be the medium of a greater benefit to it, than is ever likely to arise from anything that I can write, unprompted and unassisted by her all but unrivalled wisdom.

CHAPTER I

INTRODUCTORY

The subject of this essay is not the so-called liberty of the will, so unfortunately opposed to the misnamed doctrine of philosophical necessity; but civil, or social liberty: the nature and limits of the power which can be legitimately exercised by society over the individual. A question seldom stated and hardly ever discussed in general terms, but which profoundly influences the practical controversies of the age by its latent presence, and is likely soon to make itself recognized as the vital question of the future. It is so far from being new, that, in a certain sense, it has divided mankind almost from the remotest ages; but in the stage of progress into which the more civilized portions of the species have now entered, it presents itself under new conditions, and requires a different and more fundamental treatment.

The struggle between liberty and authority is the most conspicuous feature in the portions of history with which we are earliest familiar, particularly in that of Greece, Rome, and England. But in old times this contest was between subjects, or some classes of subjects, and the government. By liberty, was meant protection against the tyranny of the political rulers. The rulers were conceived (except in some of the popular governments of Greece) as in a necessarily antagonistic position to the people whom they ruled. They consisted of a governing One, or a governing tribe or caste, who derived their authority from inheritance or conquest, who, at all events, did not hold it at the pleasure of the governed, and whose supremacy men did not venture, perhaps did not de-

sire, to contest, whatever precautions might be taken against its oppressive exercise. Their power was regarded as necessary, but also as highly dangerous; as a weapon which they would attempt to use against their subjects, no less than against external enemies. To prevent the weaker members of the community from being preyed upon by innumerable vultures, it was needful that there should be an animal of prey stronger than the rest, commissioned to keep them down. But as the king of the vultures would be no less bent upon preying on the flock than any of the minor harpies, it was indispensable to be in a perpetual attitude of defense against his beak and claws. The aim, therefore, of patriots was to set limits to the power which the ruler should be suffered to exercise over the community; and this limitation was what they meant by liberty. It was attempted in two ways. First, by obtaining a recognition of certain immunities, called political liberties or rights, which it was to be regarded as a breach of duty in the ruler to infringe, and which if he did infringe, specific resistance, or general rebellion, was held to be justifiable. A second, and generally a later expedient, was the establishment of constitutional checks, by which the consent of the community, or of a body of some sort, supposed to represent its interests, was made a necessary condition to some of the more important acts of the governing power. To the first of these modes of limitation, the ruling power, in most European countries, was compelled, more or less, to submit. It was not so with the second; and, to attain this, or when already in some degree possessed, to attain it more completely, became everywhere the principal object of the lovers of liberty. And so long as mankind were content to combat one enemy by another, and to be ruled by a master, on condition of being guaranteed more or less efficaciously against his tyranny, they did not carry their aspirations beyond this point.

A time, however, came, in the progress of human affairs, when men ceased to think it a necessity of nature that their governors should be an independent power, opposed in interest to themselves. It appeared to them much better that the various magistrates of the State should be their tenants or delegates, revocable at their pleasure. In that way alone, it

seemed, could they have complete security that the powers of government would never be abused to their disadvantage. By degrees this new demand for elective and temporary rulers became the prominent object of the exertions of the popular party, wherever any such party existed; and superseded, to a considerable extent, the previous efforts to limit the power of rulers. As the struggle proceeded for making the ruling power emanate from the periodical choice of the ruled, some persons began to think that too much importance had been attached to the limitation of the power itself. *That* (it might seem) was a resource against rulers whose interests were habitually opposed to those of the people. What was now wanted was, that the rulers should be identified with the people; that their interest and will should be the interest and will of the nation. The nation did not need to be protected against its own will. There was no fear of its tyrannizing over itself. Let the rulers be effectually responsible to it, promptly removable by it, and it could afford to trust them with power of which it could itself dictate the use to be made. Their power was but the nation's own power, concentrated, and in a form convenient for exercise. This mode of thought, or rather perhaps of feeling, was common among the last generation of European liberalism, in the Continental section of which it still apparently predominates. Those who admit any limit to what a government may do, except in the case of such governments as they think ought not to exist, stand out as brilliant exceptions among the political thinkers of the Continent. A similar tone of sentiment might by this time have been prevalent in our own country, if the circumstances which for a time encouraged it had continued unaltered.

But in political and philosophical theories, as well as in persons, success discloses faults and infirmities which failure might have concealed from observation. The notion that the people have no need to limit their power over themselves, might seem axiomatic when popular government was a thing only dreamed about, or read of as having existed at some distant period of the past. Neither was that notion necessarily disturbed by such temporary aberrations as those of the French Revolution, the worst of which were the work of a

usurping few, and which, in any case, belonged not to the permanent working of popular institutions, but to a sudden and convulsive outbreak against monarchical and aristocratic despotism. In time, however, a democratic republic came to occupy a large portion of the earth's surface, and made itself felt as one of the most powerful members of the community of nations; and elective and responsible government became subject to the observations and criticisms which wait upon a great existing fact. It was now perceived that such phrases as 'self-government,' and 'the power of the people over themselves,' do not express the true state of the case. The 'people' who exercise the power are not always the same people with those over whom it is exercised; and the 'self-government' spoken of is not the government of each by himself, but of each by all the rest. The will of the people, moreover, practically means the will of the most numerous or the most active *part* of the people; the majority, or those who succeed in making themselves accepted as the majority: the people, consequently *may* desire to oppress a part of their number, and precautions are as much needed against this as against any other abuse of power. The limitation, therefore, of the power of government over individuals loses none of its importance when the holders of power are regularly accountable to the community, that is, to the strongest party therein. This view of things, recommending itself equally to the intelligence of thinkers and to the inclination of those important classes in European society to whose real or supposed interests democracy is adverse, has had no difficulty in establishing itself; and in political speculations 'the tyranny of the majority' is now generally included among the evils against which society requires to be on its guard.

Like other tyrannies, the tyranny of the majority was at first, and is still vulgarly, held in dread chiefly as operating through the acts of the public authorities. But reflecting persons perceived that when society is itself the tyrant—society collectively over the separate individuals who compose it—its means of tyrannizing are not restricted to the acts which it may do by the hands of its political functionaries. Society can and does execute its own mandates; and if it issues wrong

mandates instead of right, or any mandates at all in things with which it ought not to meddle, it practices a social tyranny more formidable than many kinds of political oppression, since, though not usually upheld by such extreme penalties, it leaves fewer means of escape, penetrating much more deeply into the details of life, and enslaving the soul itself. Protection, therefore, against the tyranny of the magistrate is not enough: there needs protection also against the tyranny of the prevailing opinion and feeling; against the tendency of society to impose, by other means than civil penalties, its own ideas and practices as rules of conduct on those who dissent from them; to fetter the development, and, if possible, prevent the formation, of any individuality not in harmony with its ways, and compels all characters to fashion themselves upon the model of its own. There is a limit to the legitimate interference of collective opinion with individual independence; and to find that limit, and maintain it against encroachment, is as indispensable to a good condition of human affairs, as protection against political despotism.

But though this proposition is not likely to be contested in general terms, the practical question, where to place the limit —how to make the fitting adjustment between individual independence and social control—is a subject on which nearly everything remains to be done. All that makes existence valuable to anyone, depends on the enforcement of restraints upon the actions of other people. Some rules of conduct, therefore, must be imposed, by law in the first place, and by opinion on many things which are not fit subjects for the operation of law. What these rules should be is the principal question in human affairs; but if we except a few of the most obvious cases, it is one of those which least progress has been made in resolving. No two ages, and scarcely any two countries, have decided it alike; and the decision of one age or country is a wonder to another. Yet the people of any given age and country no more suspect any difficulty in it, than if it were a subject on which mankind had always been agreed. The rules which obtain among themselves appear to them self-evident and self-justifying. This all but universal illusion is one of the examples of the magical influence of custom,

which is not only, as the proverb says, a second nature, but is continually mistaken for the first. The effect of custom, in preventing any misgiving respecting the rules of conduct which mankind impose on one another, is all the more complete because the subject is one on which it is not generally considered necessary that reasons should be given, either by one person to others or by each to himself. People are accustomed to believe, and have been encouraged in the belief by some who aspire to the character of philosophers, that their feelings, on subjects of this nature, are better than reasons, and render reasons unnecessary. The practical principle which guides them to their opinions on the regulation of human conduct, is the feeling in each person's mind that everybody should be required to act as he, and those with whom he sympathizes, would like them to act. No one, indeed, acknowledges to himself that his standard of judgment is his own liking; but an opinion on a point of conduct, not supported by reasons, can only count as one person's preference; and if the reasons, when given, are a mere appeal to a similar preference felt by other people, it is still only many people's liking instead of one. To an ordinary man, however, his own preference, thus supported, is not only a perfectly satisfactory reason, but the only one he generally has for any of his notions of morality, taste, or propriety, which are not expressly written in his religious creed; and his chief guide in the interpretation even of that. Men's opinions, accordingly, on what is laudable or blamable, are affected by all the multifarious causes which influence their wishes in regard to the conduct of others, and which are as numerous as those which determine their wishes on any other subject. Sometimes their reason, at other times their prejudices or superstitions; often their social affections, not seldom their antisocial ones, their envy or jealousy, their arrogance or contemptuousness: but most commonly their desires or fears for themselves—their legitimate or illegitimate self-interest. Wherever there is an ascendant class, a large portion of the morality of the country emanates from its class interests, and its feelings of class superiority. The morality between Spartans and Helots, between planters and Negroes, between princes and subjects, between nobles and roturiers,

between men and women, has been for the most part the creation of these class interests and feelings; and the sentiments thus generated react in turn upon the moral feelings of the members of the ascendant class, in their relations among themselves. Where, on the other hand, a class, formerly ascendant, has lost its ascendancy, or where its ascendancy is unpopular, the prevailing moral sentiments frequently bear the impress of an impatient dislike of superiority. Another grand determining principle of the rules of conduct, both in act and forbearance, which have been enforced by law or opinion, has been the servility of mankind towards the supposed preferences or aversions of their temporal masters or of their gods. This servility, though essentially selfish, is not hypocrisy; it gives rise to perfectly genuine sentiments of abhorrence; it made men burn magicians and heretics. Among so many baser influences, the general and obvious interests of society have of course had a share, and a large one, in the direction of the moral sentiments; less, however, as a matter of reason, and on their own account, than as a consequence of the sympathies and antipathies which grew out of them; and sympathies and antipathies which had little or nothing to do with the interests of society, have made themselves felt in the establishment of moralities with quite as great force.

The likings and dislikings of society, or of some powerful portion of it, are thus the main thing which has practically determined the rules laid down for general observance, under the penalties of law or opinion. And in general, those who have been in advance of society in thought and feeling, have left this condition of things unassailed in principle, however they may have come into conflict with it in some of its details. They have occupied themselves rather in inquiring what things society ought to like or dislike, than in questioning whether its likings or dislikings should be a law to individuals. They preferred endeavoring to alter the feelings of mankind on the particular points on which they were themselves heretical, rather than make common cause in defense of freedom, with heretics generally. The only case in which the higher ground has been taken on principle and maintained with consistency, by any but an individual here and there, is that of

religious belief: a case instructive in many ways, and not least so as forming a most striking instance of the fallibility of what is called the moral sense; for the *odium theologicum*, in a sincere bigot, is one of the most unequivocal cases of moral feeling. Those who first broke the yoke of what called itself the Universal Church, were in general as little willing to permit difference of religious opinion as that church itself. But when the heat of the conflict was over, without giving a complete victory to any party, and each church or sect was reduced to limit its hopes to retaining possession of the ground it already occupied; minorities, seeing that they had no chance of becoming majorities, were under the necessity of pleading to those whom they could not convert, for permission to differ. It is accordingly on this battlefield, almost solely, that the rights of the individual against society have been asserted on broad grounds of principle, and the claim of society to exercise authority over dissentients openly controverted. The great writers to whom the world owes what religious liberty it possesses, have mostly asserted freedom of conscience as an indefeasible right, and denied absolutely that a human being is accountable to others for his religious belief. Yet so natural to mankind is intolerance in whatever they really care about, that religious freedom has hardly anywhere been practically realized, except where religious indifference, which dislikes to have its peace disturbed by theological quarrels, has added its weight to the seale. In the minds of almost all religious persons, even in the most tolerant countries, the duty of toleration is admitted with tacit reserves. One person will bear with dissent in matters of church government, but not of dogma; another can tolerate everybody, short of a Papist or a Unitarian; another everyone who believes in revealed religion; a few extend their charity a little further, but stop at the belief in a God and in a future state. Wherever the sentiment of the majority is still genuine and intense, it is found to have abated little of its claim to be obeyed.

In England, from the peculiar circumstances of our political history, though the yoke of opinion is perhaps heavier, that of law is lighter, than in most other countries of Europe; and there is considerable jealousy of direct interference, by the

legislative or the executive power, with private conduct; not so much from any just regard for the independence of the individual, as from the still subsisting habit of looking on the government as representing an opposite interest to the public. The majority have not yet learnt to feel the power of the government their power, or its opinions their opinions. When they do so, individual liberty will probably be as much exposed to invasion from the government, as it already is from public opinion. But, as yet, there is a considerable amount of feeling ready to be called forth against any attempt of the law to control individuals in things in which they have not hitherto been accustomed to be controlled by it; and this with very little discrimination as to whether the matter is, or is not, within the legitimate sphere of legal control; insomuch that the feeling, highly salutary on the whole, is perhaps quite as often misplaced as well grounded in the particular instances of its application. There is, in fact, no recognized principle by which the propriety or impropriety of government interference is customarily tested. People decide according to their personal preferences. Some, whenever they see any good to be done, or evil to be remedied, would willingly instigate the government to undertake the business; while others prefer to bear almost any amount of social evil, rather than add one to the departments of human interests amenable to governmental control. And men range themselves on one or the other side in any particular case, according to this general direction of their sentiments; or according to the degree of interest which they feel in the particular thing which it is proposed that the government should do, or according to the belief they entertain that the government would, or would not, do it in the manner they prefer; but very rarely on account of any opinion to which they consistently adhere, as to what things are fit to be done by a government. And it seems to me that in consequence of this absence of rule or principle, one side is at present as often wrong as the other: the interference of government is, with about equal frequency, improperly invoked and improperly condemned.

The object of this essay is to assert one very simple principle, as entitled to govern absolutely the dealings of society

with the individual in the way of compulsion and control, whether the means used be physical force in the form of legal penalties, or the moral coercion of public opinion. That principle is, that the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant. He cannot rightfully be compelled to do or forbear because it will be better for him to do so, because it will make him happier, because, in the opinions of others, to do so would be wise, or even right. These are good reasons for remonstrating with him, or reasoning with him, or persuading him, or entreating him, but not for compelling him, or visiting him with any evil in case he do otherwise. To justify that, the conduct from which it is desired to deter him must be calculated to produce evil to someone else. The only part of the conduct of anyone, for which he is amenable to society, is that which concerns others. In the part which merely concerns himself, his independence is, of right, absolute. Over himself, over his own body and mind, the individual is sovereign.

It is perhaps hardly necessary to say that this doctrine is meant to apply only to human beings in the maturity of their faculties. We are not speaking of children, or of young persons below the age which the law may fix as that of manhood or womanhood. Those who are still in a state to require being taken care of by others, must be protected against their own actions as well as against external injury. For the same reason, we may leave out of consideration those backward states of society in which the race itself may be considered as in its nonage. The early difficulties in the way of spontaneous progress are so great, and there is seldom any choice of means for overcoming them; and a ruler full of the spirit of improvement is warranted in the use of any expedients that will attain an end, perhaps otherwise unattainable. Despotism is a legitimate mode of government in dealing with barbarians, provided the end be their improvement, and the means justi-

fied by actually effecting that end. Liberty, as a principle, has no application to any state of things anterior to the time when mankind have become capable of being improved by free and equal discussion. Until then, there is nothing for them but implicit obedience to an Akbar or a Charlemagne, if they are so fortunate as to find one. But as soon as mankind have attained the capacity of being guided to their own improvement by conviction or persuasion (a period long since reached in all nations with whom we need here concern ourselves), compulsion, either in the direct form or in that of pains and penalties for non-compliance, is no longer admissible as a means to their own good, and justifiable only for the security of others.

It is proper to state that I forego any advantage which could be derived to my argument from the idea of abstract right, as a thing independent of utility. I regard utility as the ultimate appeal on all ethical questions; but it must be utility in the largest sense, grounded on the permanent interests of a man as a progressive being. Those interests, I contend, authorized the subjection of individual spontaneity to external control, only in respect to those actions of each which concern the interest of other people. If anyone does an act hurtful to others, there is a *prima facie* case for punishing him, by law, or, where legal penalties are not safely applicable, by general disapprobation. There are also many positive acts for the benefit of others, which he may rightfully be compelled to perform: such as to give evidence in a court of justice; to bear his fair share in the common defense, or in any other joint work necessary to the interest of the society of which he enjoys the protection; and to perform certain acts of individual beneficence, such as saving a fellow-creature's life, or interposing to protect the defenseless against ill-usage, things which whenever it is obviously a man's duty to do, he may rightfully be made responsible to society for not doing. A person may cause evil to others not only by his actions but by his inaction, and in either case he is justly accountable to them for the injury. The latter case, it is true, requires a much more cautious exercise of compulsion than the former. To make anyone answerable for doing evil to others is the rule; to

make him answerable for not preventing evil is, comparatively speaking, the exception. Yet there are many cases clear enough and grave enough to justify that exception. In all things which regard the external relations of the individual, he is *de jure* amenable to those whose interests are concerned, and, if need be, to society as their protector. There are often good reasons for not holding him to the responsibility; but these reasons must arise from the special expediencies of the case: either because it is a kind of case in which he is on the whole likely to act better, when left to his own discretion, than when controlled in any way in which society have it in their power to control him; or because the attempt to exercise control would produce other evils, greater than those which it would prevent. When such reasons as these preclude the enforcement of responsibility, the conscience of the agent himself should step into the vacant judgment seat, and protect those interests of others which have no external protection; judging himself all the more rigidly, because the case does not admit of his being made accountable to the judgment of his fellow-creatures.

But there is a sphere of action in which society, as distinguished from the individual, has, if any, only an indirect interest; comprehending all that portion of a person's life and conduct which affects only himself, or if it also affects others, only with their free, voluntary, and undeceived consent and participation. When I say only himself, I mean directly, and in the first instance; for whatever affects himself, may affect others through himself; and the objection which may be grounded on this contingency, will receive consideration in the sequel. This, then, is the appropriate region of human liberty. It comprises, *first*, the inward domain of consciousness; demanding liberty of conscience in the most comprehensive sense; liberty of thought and feeling; absolute freedom of opinion and sentiment on all subjects, practical or speculative, scientific, moral, or theological. The liberty of expressing and publishing opinions may seem to fall under a different principle, since it belongs to that part of the conduct of an individual which concerns other people; but, being almost of as much importance as the liberty of thought itself,

and resting in great part on the same reasons, is practically inseparable from it. *Secondly*, the principle requires liberty of tastes and pursuits; of framing the plan of our life to suit our own character; of doing as we like, subject to such consequences as may follow: without impediment from our fellow-creatures, so long as what we do does not harm them, even though they should think our conduct foolish, perverse, or wrong. *Thirdly*, from this liberty of each individual, follows the liberty, within the same limits, of combination among individuals; freedom to unite, for any purpose not involving harm to others: the persons combining being supposed to be of full age, and not forced or deceived.

No society in which these liberties are not, on the whole, respected, is free, whatever may be its form of government; and none is completely free in which they do not exist absolute and unqualified. The only freedom which deserves the name, is that of pursuing our own good in our own way, so long as we do not attempt to deprive others of theirs, or impede their efforts to obtain it. Each is the proper guardian of his own health, whether bodily, or mental and spiritual. Mankind are greater gainers by suffering each other to live as seems good to themselves, than by compelling each to live as seems good to the rest.

Though this doctrine is anything but new, and, to some persons, may have the air of a truism, there is no doctrine which stands more directly opposed to the general tendency of existing opinion and practice. Society has expended fully as much effort in the attempt (according to its lights) to compel people to conform to its notions of personal as of social excellence. The ancient commonwealths thought themselves entitled to practice, and the ancient philosophers countenanced, the regulation of every part of private conduct by public authority, on the ground that the State had a deep interest in the whole bodily and mental discipline of every one of its citizens: a mode of thinking which may have been admissible in small republics surrounded by powerful enemies, in constant peril of being subverted by foreign attack or internal commotion, and to which even a short interval of relaxed energy and self-command might so easily be fatal that

they could not afford to wait for the salutary permanent effects of freedom. In the modern world, the greater size of political communities, and, above all, the separation between spiritual and temporal authority (which placed the direction of men's consciences in other hands than those which controlled their worldly affairs), prevented so great an interference by law in the details of private life; but the engines of moral repression have been wielded more strenuously against divergence from the reigning opinion in self-regarding, than even in social matters; religion, the most powerful of the elements which have entered into the formation of moral feeling, having almost always been governed either by the ambition of a hierarchy, seeking control over every department of human conduct, or by the spirit of Puritanism. And some of those modern reformers who have placed themselves in strongest opposition to the religions of the past, have been no way behind either churches or sects in their assertion of the right of spiritual domination: M. Comte, in particular, whose social system, as unfolded in his *Système de Politique Positive*, aims at establishing (though by moral more than by legal appliances) a despotism of society over the individual, surpassing anything contemplated in the political ideal of the most rigid disciplinarian among the ancient philosophers.

Apart from the peculiar tenets of individual thinkers, there is also in the world at large an increasing inclination to stretch unduly the powers of society over the individual, both by the force of opinion and even by that of legislation; and as the tendency of all the changes taking place in the world is to strengthen society, and diminish the power of the individual, this encroachment is not one of the evils which tend spontaneously to disappear, but, on the contrary, to grow more and more formidable. The disposition of mankind, whether as rulers or as fellow-citizens, to impose their own opinions and inclinations as a rule of conduct on others, is so energetically supported by some of the best and by some of the worst feelings incident to human nature, that it is hardly ever kept under restraint by anything but want of power; and as the power is not declining, but growing, unless a strong barrier of moral conviction can be raised against the mischief, we

must expect, in the present circumstances of the world, to see it increase.

It will be convenient for the argument, if, instead of at once entering upon the general thesis, we confine ourselves in the first instance to a single branch of it, on which the principle here stated is, if not fully, yet to a certain point, recognized by the current opinions. This one branch is the *liberty of thought:* from which it is impossible to separate the cognate liberty of speaking and of writing. Although these liberties, to some considerable amount, form part of the political morality of all countries which profess religious toleration and free institutions, the grounds, both philosophical and practical, on which they rest, are perhaps not so familiar to the general mind, nor so thoroughly appreciated by many even of the leaders of opinion, as might have been expected. Those grounds, when rightly understood, are of much wider application than to only one division of the subject, and a thorough consideration of this part of the question will be found the best introduction to the remainder. Those to whom nothing which I am about to say will be new, may therefore, I hope, excuse me, if on a subject which for now three centuries has been so often discussed, I venture on one discussion more.

CHAPTER II

OF THE LIBERTY OF THOUGHT AND DISCUSSION

The time, it is to be hoped, is gone by, when any defense would be necessary of the 'liberty of the press' as one of the securities against corrupt or tyrannical government. No argument, we may suppose, can now be needed against permitting a legislature or an executive, not identified in interest with the people, to prescribe opinions to them, and determine what doctrines or what arguments they shall be allowed to hear. This aspect of the question, besides, has been so often and so triumphantly enforced by preceding writers, that it need not be specially insisted on in this place. Though the law of England, on the subject of the press, is as servile to this day as it was in the time of the Tudors, there is little danger of its being actually put in force against political discussion, except during some temporary panic, when fear of insurrection drives ministers and judges from their propriety; [1] and, speaking generally, it is not, in constitutional countries, to be apprehended that the government, whether completely responsible to the people or not, will often attempt to control the expression of opinion, except when in doing so it makes itself the organ of the general intolerance of the public. Let us suppose, therefore, that the government is entirely at one with the people, and never thinks of exerting any power of coercion unless in agreement with what it conceives to be their voice. But I deny the right of the people to exercise such coercion, either by themselves or by their government. The power itself is illegitimate. The best government has no more title to it than the worst. It is as noxious, or more noxious, when ex-

erted in accordance with public opinion, than when in opposition to it. If all mankind minus one were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified in silencing mankind. Were an opinion a personal possession of no value except to the owner; if to be obstructed in the enjoyment of it were simply a private injury, it would make some difference whether the injury was inflicted only on a few persons or on many. But the peculiar evil of silencing the expression of an opinion is, that it is robbing the human race: posterity as well as the existing generation; those who dissent from the opinion, still more than those who hold it. If the opinion is right, they are deprived of the opportunity of exchanging error for truth; if wrong, they lose, what is almost as great a benefit, the clearer perception and livelier impression of truth, produced by its collision with error.

It is necessary to consider separately these two hypotheses, each of which has a distinct branch of the argument corresponding to it. We can never be sure that the opinion we are endeavoring to stifle is a false opinion; and if we were sure, stifling it would be an evil still.

First: the opinion which it is attempted to suppress by authority may possibly be true. Those who desire to suppress it, of course deny its truth; but they are not infallible. They have no authority to decide the question for all mankind, and exclude every other person from the means of judging. To refuse a hearing to an opinion, because they are sure that it is false, is to assume that *their* certainty is the same thing as *absolute* certainty. All silencing of discussion is an assumption of infallibility. Its condemnation may be allowed to rest on this common argument, not the worse for being common.

Unfortunately for the good sense of mankind, the fact of their fallibility is far from carrying the weight in their practical judgment which is always allowed to it in theory; for while everyone well knows himself to be fallible, few think it necessary to take any precautions against their own fallibility, or admit the supposition that any opinion of which they

feel very certain, may be one of the examples of the error to which they acknowledge themselves to be liable. Absolute princes, or others who are accustomed to unlimited deference, usually feel this complete confidence in their own opinions on nearly all subjects. People more happily situated, who sometimes hear their opinions disputed, and are not wholly unused to be set right when they are wrong, place the same unbounded reliance only on such of their opinions as are shared by all who surround them, or to whom they habitually defer; for in proportion to a man's want of confidence in his own solitary judgment, does he usually repose, with implicit trust, on the infallibility of 'the world' in general. And the world, to each individual, means the part of it with which he comes in contact—his party, his sect, his church, his class of society; the man may be called, by comparison, almost liberal and large-minded to whom it means anything so comprehensive as his own country or his own age. Nor is his faith in this collective authority at all shaken by his being aware that other ages, countries, sects, churches, classes, and parties have thought, and even now think, the exact reverse. He devolves upon his own world the responsibility of being in the right against the dissentient worlds of other people; and it never troubles him that mere accident has decided which of these numerous worlds is the object of his reliance, and that the same causes which make him a Churchman in London, would have made him a Buddhist or a Confucian in Pekin. Yet it is as evident in itself as any amount of argument can make it, that ages are no more infallible than individuals; every age having held many opinions which subsequent ages have deemed not only false but absurd; and it is as certain that many opinions now general will be rejected by future ages, as it is that many, once general, are rejected by the present.

The objection likely to be made to this argument would probably take some such form as the following. There is no greater assumption of infallibility in forbidding the propagation of error, than in any other thing which is done by public authority on its own judgment and responsibility. Judgment is given to men that they may use it. Because it may be used

erroneously, are men to be told that they ought not to use it at all? To prohibit what they think pernicious, is not claiming exemption from error, but fulfilling the duty incumbent on them, although fallible, of acting on their conscientious conviction. If we were never to act on our opinions, because those opinions may be wrong, we should leave all our interests uncared for, and all our duties unperformed. An objection which applies to all conduct can be no valid objection to any conduct in particular. It is the duty of governments, and of individuals, to form the truest opinions they can; to form them carefully, and never impose them upon others unless they are quite sure of being right. But when they are sure (such reasoners may say), it is not conscientiousness but cowardice to shrink from acting on their opinions, and allow doctrines which they honestly think dangerous to the welfare of mankind, either in this life or in another, to be scattered abroad without restraint, because other people, in less enlightened times, have persecuted opinions now believed to be true. Let us take care, it may be said, not to make the same mistake; but governments and nations have made mistakes in other things, which are not denied to be fit subjects for the exercise of authority: they have laid on bad taxes, made unjust wars. Ought we therefore to lay on no taxes, and, under whatever provocation, make no wars? Men, and governments, must act to the best of their ability. There is no such thing as absolute certainty, but there is assurance sufficient for the purposes of human life. We may, and must, assume our opinion to be true for the guidance of our own conduct: and it is assuming no more when we forbid bad men to pervert society by the propagation of opinions which we regard as false and pernicious.

I answer that it is assuming very much more. There is the greatest difference between presuming an opinion to be true because, with every opportunity for contesting it, it has not been refuted, and assuming its truth for the purpose of not permitting its refutation. Complete liberty of contradicting and disproving our opinion is the very condition which justifies us in assuming its truth for purposes of action; and on no

other terms can a being with human faculties have any rational assurance of being right.

When we consider either the history of opinion, or the ordinary conduct of human life, to what is it to be ascribed that the one and the other are no worse than they are? Not certainly to the inherent force of the human understanding; for, on any matter not self-evident, there are ninety-nine persons totally incapable of judging of it for one who is capable; and the capacity of the hundredth person is only comparative: for the majority of the eminent men of every past generation held many opinions now known to be erroneous, and did or approved numerous things which no one will now justify. Why is it, then, that there is on the whole a preponderance among mankind of rational opinions and rational conduct? If there really is this preponderance—which there must be unless human affairs are, and have always been, in an almost desperate state—it is owing to a quality of the human mind, the source of everything respectable in man either as an intellectual or as a moral being, namely, that his errors are corrigible. He is capable of rectifying his mistakes, by discussion and experience. Not by experience alone. There must be discussion, to show how experience is to be interpreted. Wrong opinions and practices gradually yield to fact and argument; but facts and arguments, to produce any effect on the mind, must be brought before it. Very few facts are able to tell their own story, without comments to bring out their meaning. The whole strength and value, then, of human judgment, depending on the one property, that it can be set right when it is wrong, reliance can be placed on it only when the means of setting it right are kept constantly at hand. In the case of any person whose judgment is really deserving of confidence, how has it become so? Because he has kept his mind open to criticism of his opinions and conduct. Because it has been his practice to listen to all that could be said against him; to profit by as much of it as was just, and expound to himself, and upon occasion to others, the fallacy of what was fallacious. Because he has felt that the only way in which a human being can make some approach to knowing the whole of a subject, is by hearing what can be said about

it by persons of every variety of opinion, and studying all modes in which it can be looked at by every character of mind. No wise man ever acquired his wisdom in any mode but this; nor is it in the nature of human intellect to become wise in any other manner. The steady habit of correcting and completing his own opinion by collating it with those of others, so far from causing doubt and hesitation in carrying it into practice, is the only stable foundation for a just reliance on it: for, being cognizant of all that can, at least obviously, be said against him, and having taken up his position against all gainsayers—knowing that he has sought for objections and difficulties, instead of avoiding them, and has shut out no light which can be thrown upon the subject from any quarter—he has a right to think his judgment better than that of any person, or any multitude, who have not gone through a similar process.

It is not too much to require that what the wisest of mankind, those who are best entitled to trust their own judgment, find necessary to warrant their relying on it, should be submitted to by that miscellaneous collection of a few wise and many foolish individuals, called the public. The most intolerant of churches, the Roman Catholic Church, even at the canonization of a saint, admits, and listens patiently to, a 'devil's advocate.' The holiest of men, it appears, cannot be admitted to posthumous honors, until all that the devil could say against him is known and weighed. If even the Newtonian philosophy were not permitted to be questioned, mankind could not feel as complete assurance of its truth as they now do. The beliefs which we have most warrant for, have no safeguard to rest on but a standing invitation to the whole world to prove them unfounded. If the challenge is not accepted, or is accepted and the attempt fails, we are far enough from certainty still; but we have done the best that the existing state of human reason admits of; we have neglected nothing that could give the truth a chance of reaching us: if the lists are kept open, we may hope that if there be a better truth, it will be found when the human mind is capable of receiving it; and in the meantime we may rely on having attained such approach to truth as is possible in our own day. This is

the amount of certainty attainable by a fallible being, and this the sole way of attaining it.

Strange it is that men should admit the validity of the arguments for free discussion, but object to their being 'pushed to an extreme'; not seeing that unless the reasons are good for an extreme case, they are not good for any case. Strange that they should imagine that they are not assuming infallibility, when they acknowledge that there should be free discussion on all subjects which can possibly be *doubtful*, but think that some particular principle or doctrine should be forbidden to be questioned because it is so *certain*, that is, because *they are certain* that it is certain. To call any proposition certain while there is anyone who would deny its certainty if permitted, but who is not permitted, is to assume that we ourselves, and those who agree with us, are the judges of certainty, and judges without hearing the other side.

In the present age—which has been described as "destitute of faith, but terrified at scepticism"—in which people feel sure, not so much that their opinions are true, as that they should not know what to do without them—the claims of an opinion to be protected from public attack are rested not so much on its truth, as on its importance to society. There are, it is alleged, certain beliefs so useful, not to say indispensable, to well-being that it is as much the duty of governments to uphold those beliefs, as to protect any other of the interests of society. In a case of such necessity, and so directly in the line of their duty, something less than infallibility may, it is maintained, warrant, and even bind, governments to act on their own opinion, confirmed by the general opinion of mankind. It is also often argued, and still oftener thought, that none but bad men would desire to weaken these salutary beliefs; and there can be nothing wrong, it is thought, in restraining bad men, and prohibiting what only such men would wish to practice. This mode of thinking makes the justification of restraints on discussion not a question of the truth of doctrines, but of their usefulness; and flatters itself by that means to escape the responsibility of claiming to be an infallible judge of opinions. But those who thus satisfy themselves, do not perceive that the assumption of infallibility is merely shifted

from one point to another. The usefulness of an opinion is itself matter of opinion: as disputable, as open to discussion, and requiring discussion as much as the opinion itself. There is the same need of an infallible judge of opinions to decide an opinion to be noxious, as to decide it to be false, unless the opinion condemned has full opportunity of defending itself. And it will not do to say that the heretic may be allowed to maintain the utility or harmlessness of his opinion, though forbidden to maintain its truth. The truth of an opinion is part of its utility. If we would know whether or not it is desirable that a proposition should be believed, is it possible to exclude the consideration of whether or not it is true? In the opinion, not of bad men, but of the best men, no belief which is contrary to truth can be really useful: and can you prevent such men from urging that plea, when they are charged with culpability for denying some doctrine which they are told is useful, but which they believe to be false? Those who are on the side of received opinions never fail to take all possible advantage of this plea: you do not find *them* handling the question of utility as if it could be completely abstracted from that of truth; on the contrary, it is, above all, because their doctrine is 'the truth,' that the knowledge or the belief of it is held to be so indispensable. There can be no fair discussion of the question of usefulness when an argument so vital may be employed on one side, but not on the other. And in point of fact, when law or public feeling do not permit the truth of an opinion to be disputed, they are just as little tolerant of a denial of its usefulness. The utmost they allow is an extenuation of its absolute necessity, or of the positive guilt of rejecting it.

In order more fully to illustrate the mischief of denying a hearing to opinions because we, in our own judgment, have condemned them, it will be desirable to fix down the discussion to a concrete case; and I choose, by preference, the cases which are least favorable to me—in which the argument against freedom of opinion, both on the score of truth and on that of utility, is considered the strongest. Let the opinions impugned be the belief in a God and in a future state, or any of the commonly received doctrines of morality. To fight

the battle on such ground gives a great advantage to an unfair antagonist; since he will be sure to say (and many who have no desire to be unfair will say it internally), "Are these the doctrines which you do not deem sufficiently certain to be taken under the protection of law? Is the belief in a God one of the opinions to feel sure of which you hold to be assuming infallibility?" But I must be permitted to observe that it is not the feeling sure of a doctrine (be it what it may) which I call an assumption of infallibility. It is the undertaking to decide that question *for others*, without allowing them to hear what can be said on the contrary side. And I denounce and reprobate this pretension not the less if put forth on the side of my most solemn convictions. However positive anyone's persuasion may be, not only of the falsity but of the pernicious consequences—not only of the pernicious consequences, but (to adopt expressions which I altogether condemn) the immorality and impiety of an opinion; yet if, in pursuance of that private judgment, though backed by the public judgment of his country or his contemporaries, he prevents the opinion from being heard in its defense, he assumes infallibility. And so far from the assumption being less objectionable or less dangerous because the opinion is called immoral or impious, this is the case of all others in which it is most fatal. These are exactly the occasions on which the men of one generation commit those dreadful mistakes which excite the astonishment and horror of posterity. It is among such that we find the instances memorable in history, when the arm of the law has been employed to root out the best men and the noblest doctrines; with deplorable success as to the men, though some of the doctrines have survived to be (as if in mockery) invoked in defense of similar conduct towards those who dissent from *them*, or from their received interpretation.

Mankind can hardly be too often reminded, that there was once a man named Socrates, between whom and the legal authorities and public opinion of his time there took place a memorable collision. Born in an age and country abounding in individual greatness, this man has been handed down to us by those who best knew both him and the age, as the most

virtuous man in it; while *we* know him as the head and prototype of all subsequent teachers of virtue, the source equally of the lofty inspiration of Plato and the judicious utilitarianism of Aristotle, "*i maëstri di color che sanno,*" the two headsprings of ethical as of all other philosophy. This acknowledged master of all the eminent thinkers who have since lived—whose fame, still growing after more than two thousand years, all but outweighs the whole remainder of the names which make his native city illustrious—was put to death by his countrymen, after a judicial conviction, for impiety and immorality. Impiety, in denying the gods recognized by the State; indeed his accuser asserted (see the *Apologia*) that he believed in no gods at all. Immorality, in being, by his doctrines and instructions, a "corruptor of youth." Of these charges the tribunal, there is every ground for believing, honestly found him guilty, and condemned the man who probably of all then born had deserved best of mankind to be put to death as a criminal.

To pass from this to the only other instance of judicial iniquity, the mention of which, after the condemnation of Socrates, would not be an anticlimax: the event which took place on Calvary rather more than eighteen hundred years ago. The man who left on the memory of those who witnessed his life and conversation such an impression of his moral grandeur that eighteen subsequent centuries have done homage to him as the Almighty in person, was ignominiously put to death, as what? As a blasphemer. Men did not merely mistake their benefactor; they mistook him for the exact contrary of what he was, and treated him as that prodigy of impiety which they themselves are now held to be for their treatment of him. The feelings with which mankind now regard these lamentable transactions, especially the later of the two, render them extremely unjust in their judgment of the unhappy actors. These were, to all appearance, not bad men—not worse than men commonly are, but rather the contrary; men who possessed in a full, or somewhat more than a full measure, the religious, moral, and patriotic feelings of their time and people: the very kind of men who, in all times, our own included, have every chance of passing through life blameless

and respected. The high priest who rent his garments when the words were pronounced which, according to all the ideas of his country, constituted the blackest guilt, was in all probability quite as sincere in his horror and indignation as the generality of respectable and pious men now are in the religious and moral sentiments they profess; and most of those who now shudder at his conduct, if they had lived in his time, and been born Jews, would have acted precisely as he did. Orthodox Christians who are tempted to think that those who stoned to death the first martyrs must have been worse men than they themselves are, ought to remember that one of those persecutors was Saint Paul.

Let us add one more example, the most striking of all, if the impressiveness of an error is measured by the wisdom and virtue of him who falls into it. If ever anyone possessed of power had grounds for thinking himself the best and most enlightened among his contemporaries, it was the Emperor Marcus Aurelius. Absolute monarch of the whole civilized world, he preserved through life not only the most unblemished justice, but what was less to be expected from his Stoical breeding, the tenderest heart. The few failings which are attributed to him were all on the side of indulgence; while his writings, the highest ethical product of the ancient mind, differ scarcely perceptibly, if they differ at all, from the most characteristic teachings of Christ. This man, a better Christian in all but the dogmatic sense of the word than almost any of the ostensibly Christian sovereigns who have since reigned, persecuted Christianity. Placed at the summit of all the previous attainments of humanity, with an open, unfettered intellect, and a character which led him of himself to embody in his moral writings the Christian ideal, he yet failed to see that Christianity was to be a good and not an evil to the world, with his duties to which he was so deeply penetrated. Existing society he knew to be in a deplorable state. But such as it was, he saw, or thought he saw, that it was held together, and prevented from being worse, by belief and reverence of the received divinities. As a ruler of mankind, he deemed it his duty not to suffer society to fall in pieces; and saw not how, if its existing ties

were removed, any others could be formed which could again knit it together. The new religion openly aimed at dissolving these ties: unless, therefore, it was his duty to adopt that religion, it seemed to be his duty to put it down. Inasmuch then as the theology of Christianity did not appear to him true or of divine origin; inasmuch as this strange history of a crucified God was not credible to him, and a system which purported to rest entirely upon a foundation to him so wholly unbelievable, could not be foreseen by him to be that renovating agency which, after all abatements, it has in fact proved to be; the gentlest and most amiable of philosophers and rulers, under a solemn sense of duty, authorized the persecution of Christianity. To my mind this is one of the most tragical facts in all history. It is a bitter thought, how different a thing the Christianity of the world might have been, if the Christian faith had been adopted as the religion of the empire under the auspices of Marcus Aurelius instead of those of Constantine. But it would be equally unjust to him and false to truth to deny that no one plea which can be urged for punishing anti-Christian teaching was wanting to Marcus Aurelius for punishing as he did the propagation of Christianity. No Christian more firmly believes that atheism is false, and tends to the dissolution of society, than Marcus Aurelius believed the same things of Christianity; he who, of all men then living, might have been thought the most capable of appreciating it. Unless anyone who approves of punishment for the promulgation of opinions, flatters himself that he is a wiser and better man than Marcus Aurelius—more deeply versed in the wisdom of his time, more elevated in his intellect above it—more earnest in his search for truth, or more single-minded in his devotion to it when found; let him abstain from that assumption of the joint infallibility of himself and the multitude, which the great Antoninus made with so unfortunate a result.

Aware of the impossibility of defending the use of punishment for restraining irreligious opinions by any argument which will not justify Marcus Antoninus, the enemies of religious freedom, when hard pressed, occasionally accept this

consequence, and say, with Dr. Johnson, that the persecutors of Christianity were in the right; that persecution is an ordeal through which truth ought to pass, and always passes successfully, legal penalties being, in the end, powerless against truth, though sometimes beneficially effective against mischievous errors. This is a form of the argument for religious intolerance sufficiently remarkable not to be passed without notice.

A theory which maintains that truth may justifiably be persecuted because persecution cannot possibly do it any harm, cannot be charged with being intentionally hostile to the reception of new truths; but we cannot commend the generosity of its dealing with the persons to whom mankind are indebted for them. To discover to the world something which deeply concerns it, and of which it was previously ignorant; to prove to it that it had been mistaken on some vital point of temporal or spiritual interest, is as important a service as a human being can render to his fellow-creatures, and in certain cases, as in those of the early Christians and of the Reformers, those who think with Dr. Johnson believe it to have been the most precious gift which could be bestowed on mankind. That the authors of such splendid benefits should be requited by martyrdom, that their reward should be to be dealt with as the vilest of criminals, is not, upon this theory, a deplorable error and misfortune, for which humanity should mourn in sackcloth and ashes, but the normal and justifiable state of things. The propounder of a new truth, according to this doctrine, should stand, as stood, in the legislation of the Locrians, the proposer of a new law, with a halter round his neck, to be instantly tightened if the public assembly did not, on hearing his reasons, then and there adopt his proposition. People who defend this mode of treating benefactors cannot be supposed to set much value on the benefit; and I believe this view of the subject is mostly confined to the sort of persons who think that new truths may have been desirable once, but that we have had enough of them now.

But, indeed, the dictum that truth always triumphs over persecution is one of those pleasant falsehoods which men

repeat after one another till they pass into commonplaces, but which all experience refutes. History teems with instances of truth put down by persecution. If not suppressed forever, it may be thrown back for centuries. To speak only of religious opinions: the Reformation broke out at least twenty times before Luther, and was put down. Arnold of Brescia was put down. Fra Dolcino was put down. Savonarola was put down. The Albigeois were put down. The Vaudois were put down. The Lollards were put down. The Hussites were put down. Even after the era of Luther, wherever persecution was persisted in, it was successful. In Spain, Italy, Flanders, the Austrian Empire, Protestantism was rooted out; and, most likely would have been so in England, had Queen Mary lived, or Queen Elizabeth died. Persecution has always succeeded, save where the heretics were too strong a party to be effectually persecuted. No reasonable person can doubt that Christianity might have been extirpated in the Roman Empire. It spread, and became predominant, because the persecutions were only occasional, lasting but a short time, and separated by long intervals of almost undisturbed propagandism. It is a piece of idle sentimentality that truth, merely as truth, has any inherent power denied to error of prevailing against the dungeon and the stake. Men are not more zealous for truth than they often are for error, and a sufficient application of legal or even of social penalties will generally succeed in stopping the propagation of either. The real advantage which truth has, consists in this, that when an opinion is true, it may be extinguished once, twice, or many times, but in the course of ages there will generally be found persons to rediscover it, until some one of its reappearances falls on a time when from favorable circumstances it escapes persecution until it has made such head as to withstand all subsequent attempts to suppress it.

It will be said that we do not now put to death the introducers of new opinions: we are not like our fathers who slew the prophets, we even build sepulchres to them. It is true we no longer put heretics to death; and the amount of penal infliction which modern feeling would probably

tolerate, even against the most obnoxious opinions, is not sufficient to extirpate them. But let us not flatter ourselves that we are yet free from the stain even of legal persecution. Penalties for opinion, or at least for its expression, still exist by law; and their enforcement is not, even in these times, so unexampled as to make it at all incredible that they may some day be revived in full force. In the year 1857, at the summer assizes of the county of Cornwall, an unfortunate man,[2] said to be of unexceptionable conduct in all relations of life, was sentenced to twenty-one months' imprisonment, for uttering, and writing on a gate, some offensive words concerning Christianity. Within a month of the same time, at the Old Bailey, two persons, on two separate occasions,[3] were rejected as jurymen, and one of them grossly insulted by the judge and by one of the counsel, because they honestly declared that they had no theological belief; and a third, a foreigner,[4] for the same reason, was denied justice against a thief. This refusal of redress took place in virtue of the legal doctrine, that no person can be allowed to give evidence in a court of justice who does not profess belief in a God (any god is sufficient) and in a future state; which is equivalent to declaring such persons to be outlaws, excluded from the protection of the tribunals; who may not only be robbed or assaulted with impunity, if no one but themselves, or persons of similar opinions, be present, but any one else may be robbed or assaulted with impunity, if the proof of the fact depends on their evidence. The assumption on which this is grounded is that the oath is worthless of a person who does not believe in a future state; a proposition which betokens much ignorance of history in those who assent to it (since it is historically true that a large proportion of infidels in all ages have been persons of distinguished integrity and honor); and would be maintained by no one who had the smallest conception how many of the persons in greatest repute with the world, both for virtues and attainments, are well known, at least to their intimates, to be unbelievers. The rule, besides, is suicidal, and cuts away its own foundation. Under pretense that atheists must be liars, it admits the testimony of all atheists who are willing to lie,

and rejects only those who brave the obloquy of publicly confessing a detested creed rather than affirm a falsehood. A rule thus self-convicted of absurdity so far as regards its professed purpose, can be kept in force only as a badge of hatred, a relic of persecution; a persecution, too, having the peculiarity that the qualification for undergoing it is the being clearly proved not to deserve it. The rule, and the theory it implies, are hardly less insulting to believers than to infidels. For if he who does not believe in a future state necessarily lies, it follows that they who do believe are only prevented from lying, if prevented they are, by the fear of hell. We will not do the authors and abettors of the rule the injury of supposing that the conception which they have formed of Christian virtue is drawn from their own consciousness.

These, indeed, are but rags and remnants of persecution, and may be thought to be not so much an indication of the wish to persecute, as an example of that very frequent infirmity of English minds, which makes them take a preposterous pleasure in the assertion of a bad principle, when they are no longer bad enough to desire to carry it really into practice. But unhappily there is no security in the state of the public mind that the suspension of worse forms of legal persecution, which has lasted for about the space of a generation, will continue. In this age the quiet surface of routine is as often ruffled by attempts to resuscitate past evils, as to introduce new benefits. What is boasted of at the present time as the revival of religion, is always, in narrow and uncultivated minds, at least as much the revival of bigotry; and where there is the strong permanent leaven of intolerance in the feelings of a people, which at all times abides in the middle classes of this country, it needs but little to provoke them into actively persecuting those whom they have never ceased to think proper objects of persecution.[5] For it is this—it is the opinions men entertain, and the feelings they cherish, respecting those who disown the beliefs they deem important, which makes this country not a place of mental freedom. For a long time past, the chief mischief of the legal penalties is that they strengthen the

social stigma. It is that stigma which is really effective, and so effective is it, that the profession of opinions which are under the ban of society is much less common in England than is, in many other countries, the avowal of those which incur risk of judicial punishment. In respect to all persons but those whose pecuniary circumstances make them independent of the good will of other people, opinion, on this subject, is as efficacious as law; men might as well be imprisoned, as excluded from the means of earning their bread. Those whose bread is already secured, and who desire no favors from men in power, or from bodies of men, or from the public, have nothing to fear from the open avowal of any opinions, but to be ill-thought of and ill-spoken of, and this it ought not to require a very heroic mold to enable them to bear. There is no room for any appeal *ad misericordiam* in behalf of such persons. But though we do not now inflict so much evil on those who think differently from us as it was formerly our custom to do, it may be that we do ourselves as much evil as ever by our treatment of them. Socrates was put to death, but the Socratic philosophy rose like the sun in heaven, and spread its illumination over the whole intellectual firmament. Christians were cast to the lions, but the Christian church grew up a stately and spreading tree, overtopping the older and less vigorous growths, and stifling them by its shade. Our merely social intolerance kills no one, roots out no opinions, but induces men to disguise them, or to abstain from any active effort for their diffusion. With us, heretical opinions do not perceptibly gain, or even lose, ground in each decade or generation; they never blaze out far and wide, but continue to smolder in the narrow circles of thinking and studious persons among whom they originate, without ever lighting up the general affairs of mankind with either a true or a deceptive light. And thus is kept up a state of things very satisfactory to some minds, because, without the unpleasant process of fining or imprisoning anybody, it maintains all prevailing opinions outwardly undisturbed, while it does not absolutely interdict the exercise of reason by dissentients afflicted with the malady of thought. A convenient plan for having peace in the

intellectual world, and keeping all things going on therein very much as they do already! But the price paid for this sort of intellecutal pacification is the sacrifice of the entire moral courage of the human mind. A state of things in which a large portion of the most active and inquiring intellects find it advisable to keep the general principles and grounds of their convictions within their own breasts, and attempt, in what they address to the public, to fit as much as they can of their own conclusions to premises which they have internally renounced, cannot send forth the open, fearless characters, and logical, consistent intellects who once adorned the thinking world. The sort of men who can be looked for under it, are either mere conformers to commonplace, or time-servers for truth, whose arguments on all great subjects are meant for their hearers, and are not those which have convinced themselves. Those who avoid this alternative, do so by narrowing their thoughts and interest to things which can be spoken of without venturing within the region of principles—that is, to small practical matters which would come right of themselves if but the minds of mankind were strengthened and enlarged, and which will never be made effectually right until then; while that which would strengthen and enlarge men's minds, free and daring speculation on the highest subjects, is abandoned.

Those in whose eyes this reticence on the part of heretics is no evil should consider, in the first place, that in consequence of it there is never any fair and thorough discussion of heretical opinions; and that such of them as could not stand such a discussion, though they may be prevented from spreading, do not disappear. But it is not the minds of heretics that are deteriorated most by the ban placed on all inquiry which does not end in the orthodox conclusions. The greatest harm done is to those who are not heretics, and whose whole mental development is cramped, and their reason cowed, by the fear of heresy. Who can compute what the world loses in the multitude of promising intellects combined with timid characters, who dare not follow out any bold, vigorous, independent train of thought, lest it should land them in something which would admit of being

considered irreligious or immoral? Among them we may occasionally see some man of deep conscientiousness, and subtle and refined understanding, who spends a life in sophisticating with an intellect which he cannot silence, and exhausts the resources of ingenuity in attempting to reconcile the promptings of his conscience and reason with orthodoxy, which yet he does not, perhaps, to the end succeed in doing. No one can be a great thinker who does not recognize that as a thinker it is his first duty to follow his intellect to whatever conclusions it may lead. Truth gains more even by the errors of one who, with due study and preparation, thinks for himself, than by the true opinions of those who only hold them because they do not suffer themselves to think. Not that it is solely, or chiefly, to form great thinkers, that freedom of thinking is required. On the contrary, it is as much and even more indispensable to enable average human beings to attain the mental stature which they are capable of. There have been, and may again be, great individual thinkers in a general atmosphere of mental slavery. But there never has been, nor ever will be, in that atmosphere an intellectually active people. Where any people has made a temporary approach to such a character, it has been because the dread of heterodox speculation was for a time suspended. Where there is a tacit convention that principles are not to be disputed; where the discussion of the greatest questions which can occupy humanity is considered to be closed, we cannot hope to find that generally high scale of mental activity which has made some periods of history so remarkable. Never when controversy avoided the subjects which are large and important enough to kindle enthusiasm, was the mind of a people stirred up from its foundations, and the impulse given which raised even persons of the most ordinary intellect to something of the dignity of thinking beings. Of such we have had an example in the condition of Europe during the times immediately following the Reformation; another, though limited to the Continent and to a more cultivated class, in the speculative movement of the latter half of the eighteenth century; and a third, of still briefer duration, in the intellectual fermentation of Germany during the

Goethean and Fichtean period. These periods differed widely in the particular opinions which they developed; but were alike in this, that during all three the yoke of authority was broken. In each, an old mental despotism had been thrown off, and no new one had yet taken its place. The impulse given at these three periods has made Europe what it now is. Every single improvement which has taken place either in the human mind or in institutions, may be traced distinctly to one or other of them. Appearances have for some time indicated that all three impulses are well nigh spent; and we can expect no fresh start until we again assert our mental freedom.

Let us now pass to the second division of the argument, and dismissing the supposition that any of the received opinions may be false, let us assume them to be true, and examine into the worth of the manner in which they are likely to be held, when their truth is not freely and openly canvassed. However unwillingly a person who has a strong opinion may admit the possibility that his opinion may be false, he ought to be moved by the consideration that, however true it may be, if it is not fully, frequently, and fearlessly discussed, it will be held as a dead dogma, not a living truth.

There is a class of persons (happily not quite so numerous as formerly) who think it enough if a person assents undoubtingly to what they think true, though he has no knowledge whatever of the grounds of the opinion, and could not make a tenable defense of it against the most superficial objections. Such persons, if they can once get their creed taught from authority, naturally think that no good, and some harm, comes of its being allowed to be questioned. Where their influence prevails, they make it nearly impossible for the received opinion to be rejected wisely and considerately, though it may still be rejected rashly and ignorantly; for to shut out discussion entirely is seldom possible, and when it once gets in, beliefs not grounded on conviction are apt to give way before the slightest semblance of an argument. Waiving, however, this

possibility—assuming that the true opinion abides in the mind, but abides as a prejudice, a belief independent of, and proof against, argument—this is not the way in which truth ought to be held by a rational being. This is not knowing the truth. Truth, thus held, is but one superstition the more, accidentally clinging to the words which enunciate a truth.

If the intellect and judgment of mankind ought to be cultivated, a thing which Protestants at least do not deny, on what can these faculties be more appropriately exercised by anyone, than on the things which concern him so much that it is considered necessary for him to hold opinions on them? If the cultivation of the understanding consists in one thing more than in another, it is surely in learning the grounds of one's own opinions. Whatever people believe, on subjects on which it is of the first importance to believe rightly, they ought to be able to defend against at least the common objections. But, some one may say, "Let them be *taught* the grounds of their opinions. It does not follow that opinions must be merely parroted because they are never heard controverted. Persons who learn geometry do not simply commit the theorems to memory, but understand and learn likewise the demonstrations; and it would be absurd to say that they remain ignorant of the grounds of geometrical truths, because they never hear anyone deny, and attempt to disprove them." Undoubtedly: and such teaching suffices on a subject like mathematics, where there is nothing at all to be said on the wrong side of the question. The peculiarity of the evidence of mathematical truths is that all the argument is on one side. There are no objections, and no answers to objections. But on every subject on which difference of opinion is possible, the truth depends on a balance to be struck between two sets of conflicting reasons. Even in natural philosophy, there is always some other explanation possible of the same facts—some geocentric theory instead of heliocentric, some phlogiston instead of oxygen—and it has to be shown why that other theory cannot be the true one; and until this is shown, and until we know how it is shown, we do not understand the grounds of our

opinion. But when we turn to subjects infinitely more complicated, to morals, religion, politics, social relations, and the business of life, three-fourths of the arguments for every disputed opinion consist in dispelling the appearances which favor some opinion different from it. The greatest orator, save one, of antiquity, has left it on record that he always studied his adversary's case with as great, if not still greater, intensity than even his own. What Cicero practiced as the means of forensic success requires to be imitated by all who study any subject in order to arrive at the truth. He who knows only his own side of the case, knows little of that. His reasons may be good, and no one may have been able to refute them. But if he is equally unable to refute the reasons on the opposite side; if he does not so much as know what they are, he has no ground for preferring either opinion. The rational position for him would be suspension of judgment, and unless he contents himself with that, he is either led by authority, or adopts, like the generality of the world, the side to which he feels most inclination. Nor is it enough that he should hear the arguments of adversaries from his own teachers, presented as they state them, and accompanied by what they offer as refutations. That is not the way to do justice to the arguments, or bring them into real contact with his own mind. He must be able to hear them from persons who actually believe them; who defend them in earnest, and do their very utmost for them. He must know them in their most plausible and persuasive form; he must feel the whole force of the difficulty which the true view of the subject has to encounter and dispose of; else he will never really possess himself of the portion of truth which meets and removes that difficulty. Ninety-nine in a hundred of what are called educated men are in this condition; even of those who can argue fluently for their opinions. Their conclusion may be true, but it might be false for anything they know: they have never thrown themselves into the mental position of those who think differently from them, and considered what such persons may have to say; and consequently they do not, in any proper sense of the word, know the doctrine which they themselves profess.

They do not know those parts of it which explain and justify the remainder; the considerations which show that a fact which seemingly conflicts with another is reconcilable with it, or that, of two apparently strong reasons, one and not the other ought to be preferred. All that part of the truth which turns the scale, and decides the judgment of a completely informed mind, they are strangers to; nor is it ever really known but to those who have attended equally and impartially to both sides, and endeavored to see the reasons of both in the strongest light. So essential is this discipline to a real understanding of moral and human subjects, that if opponents of all important truths do not exist, it is indispensable to imagine them, and supply them with the strongest arguments which the most skillful devil's advocate can conjure up.

To abate the force of these considerations, an enemy of free discussion may be supposed to say, that there is no necessity for mankind in general to know and understand all that can be said against or for their opinions by philosophers and theologians. That it is not needful for common men to be able to expose all the misstatements or fallacies of an ingenious opponent. That it is enough if there is always somebody capable of answering them, so that nothing likely to mislead uninstructed persons remains unrefuted. That simple minds, having been taught the obvious grounds of the truths inculcated on them, may trust to authority for the rest, and being aware that they have neither knowledge nor talent to resolve every difficulty which can be raised, may repose in the assurance that all those which have been raised have been or can be answered, by those who are specially trained to the task.

Conceding to this view of the subject the utmost that can be claimed for it by those most easily satisfied with the amount of understanding of truth which ought to accompany the belief of it; even so, the argument for free discussion is no way weakened. For even this doctrine acknowledges that mankind ought to have a rational assurance that all objections have been satisfactorily answered; and how are they to be answered if that which requires to be answered is not

spoken? or how can the answer be known to be satisfactory, if the objectors have no opportunity of showing that it is unsatisfactory? If not the public, at least the philosophers and theologians who are to resolve the difficulties, must make themselves familiar with those difficulties in their most puzzling form; and this cannot be accomplished unless they are freely stated, and placed in the most advantageous light which they admit of. The Catholic Church has its own way of dealing with this embarrassing problem. It makes a broad separation between those who can be permitted to receive its doctrines on conviction, and those who must accept them on trust. Neither, indeed, are allowed any choice as to what they will accept; but the clergy, such at least as can be fully confided in, may admissibly and meritoriously make themselves acquainted with the arguments of opponents, in order to answer them, and may, therefore, read heretical books; the laity, not unless by special permission, hard to be obtained. This discipline recognizes a knowledge of the enemy's case as beneficial to the teachers, but finds means, consistent with this, of denying it to the rest of the world: thus giving to the *élite* more mental culture, though not more mental freedom, than it allows to the mass. By this device it succeeds in obtaining the kind of mental superiority which its purposes require; for though culture without freedom never made a large and liberal mind, it can make a clever *nisi prius* advocate of a cause. But in countries professing Protestantism, this resource is denied: since Protestants hold, at least in theory, that the responsibility for the choice of a religion must be borne by each for himself, and cannot be thrown off upon teachers. Besides, in the present state of the world, it is practically impossible that writings which are read by the instructed can be kept from the uninstructed. If the teachers of mankind are to be cognisant of all that they ought to know, everything must be free to be written and published without restraint.

If, however, the mischievous operation of the absence of free discussion, when the received opinions are true, were confined to leaving men ignorant of the grounds of those opinions, it might be thought that this, if an intellectual,

is no moral evil, and does not affect the worth of the opinions, regarded in their influence on the character. The fact, however, is that not only the grounds of the opinion are forgotten in the absence of discussion, but too often the meaning of the opinion itself. The words which convey it cease to suggest ideas, or suggest only a small portion of those they were originally employed to communicate. Instead of a vivid conception and a living belief, there remain only a few phrases retained by rote; or, if any part, the shell and husk only of the meaning is retained, the finer essence being lost. The great chapter in human history which this fact occupies and fills, cannot be too earnestly studied and meditated on.

It is illustrated in the experience of almost all ethical doctrines and religious creeds. They are all full of meaning and vitality to those who originate them, and to the direct disciples of the originators. Their meaning continues to be felt in undiminished strength, and is perhaps brought out into even fuller consciousness, so long as the struggle lasts to give the doctrine or creed an ascendancy over other creeds. At last it either prevails, and becomes the general opinion, or its progress stops; it keeps possession of the ground it has gained, but ceases to spread further. When either of these results has become apparent, controversy on the subject flags, and gradually dies away. The doctrine has taken its place, if not as a received opinion, as one of the admitted sects or divisions of opinion: those who hold it have generally inherited, not adopted it; and conversion from one of these doctrines to another, being now an exceptional fact, occupies little place in the thoughts of their professors. Instead of being, as at first, constantly on the alert either to defend themselves against the world, or to bring the world over to them, they have subsided into acquiescence, and neither listen, when they can help it, to arguments against their creed, nor trouble dissentients (if there be such) with arguments in its favor. From this time may usually be dated the decline in the living power of the doctrine. We often hear the teachers of all creeds lamenting the difficulty of keeping up in the minds of believers a lively apprehension

of the truth which they nominally recognize, so that it may penetrate the feelings, and acquire a real mastery over the conduct. No such difficulty is complained of while the creed is still fighting for its existence: even the weaker combatants then know and feel what they are fighting for, and the difference between it and other doctrines; and in that period of every creed's existence, not a few persons may be found, who have realized its fundamental principles in all the forms of thought, have weighed and considered them in all their important bearings, and have experienced the full effect on the character which belief in that creed ought to produce in a mind thoroughly imbued with it. But when it has come to be an hereditary creed, and to be received passively, not actively; when the mind is no longer compelled, in the same degree as at first, to exercise its vital powers on the questions which its belief presents to it: there is a progressive tendency to forget all of the belief except the formularies, or to give it a dull and torpid assent, as if accepting it on trust dispensed with the necessity of realizing it in consciousness, or testing it by personal experience, until it almost ceases to connect itself at all with the inner life of the human being. Then are seen the cases, so frequent in this age of the world as almost to form the majority, in which the creed remains as it were outside the mind, incrusting and petrifying it against all other influences addressed to the higher parts of our nature; manifesting its power by not suffering any fresh and living conviction to get in, but itself doing nothing for the mind or heart, except standing sentinel over them to keep them vacant.

To what an extent doctrines intrinsically fitted to make the deepest impression upon the mind may remain in it as dead beliefs, without being ever realized in the imagination, the feelings, or the understanding, is exemplified by the manner in which the majority of believers hold the doctrines of Christianity. By Christianity I here mean what is accounted such by all churches and sects—the maxims and precepts contained in the New Testament. These are considered sacred, and accepted as laws, by all professing Christians. Yet it is scarcely too much to say that not one Christian in a

thousand guides or tests his individual conduct by reference to those laws. The standard to which he does refer it, is the custom of his nation, his class, or his religious profession. He has thus, on the one hand, a collection of ethical maxims, which he believes to have been vouchsafed to him by infallible wisdom as rules for his government; and on the other a set of every-day judgments and practices, which go a certain length with some of those maxims, not so great a length with others, stand in direct opposition to some, and are, on the whole, a compromise between the Christian creed and the interests and suggestions of worldly life. To the first of these standards he gives his homage; to the other his real allegiance. All Christians believe that the blessed are the poor and humble, and those who are ill-used by the world; that it is easier for a camel to pass through the eye of a needle than for a rich man to enter the kingdom of heaven; that they should judge not, lest they be judged; that they should swear not at all; that they should love their neighbor as themselves; that if one take their cloak, they should give him their coat also; that they should take no thought for the morrow; that if they would be perfect they should sell all that they have and give it to the poor. They are not insincere when they say that they believe these things. They do believe them, as people believe what they have always heard lauded and never discussed. But in the sense of that living belief which regulates conduct, they believe these doctrines just up to the point to which it is usual to act upon them. The doctrines in their integrity are serviceable to pelt adversaries with; and it is understood that they are to be put forward (when possible) as the reasons for whatever people do that they think laudable. But anyone who reminded them that the maxims require an infinity of things which they never even think of doing, would gain nothing but to be classed among those very unpopular characters who affect to be better than other people. The doctrines have no hold on ordinary believers—are not a power in their minds. They have an habitual respect for the sound of them, but no feeling which spreads from the words to the things signified, and forces the mind to take

them in, and make them conform to the formula. Whenever conduct is concerned, they look round for Mr. A and B to direct them how far to go in obeying Christ.

Now we may be well assured that the case was not thus, but far otherwise, with the early Christians. Had it been thus, Christianity never would have expanded from an obscure sect of the despised Hebrews into the religion of the Roman empire. When their enemies said, "See how these Christians love one another" (a remark not likely to be made by anybody now), they assuredly had a much livelier feeling of the meaning of their creed than they have ever had since. And to this cause, probably, it is chiefly owing that Christianity now makes so little progress in extending its domain, and after eighteen centuries is still nearly confined to Europeans and the descendants of Europeans. Even with the strictly religious, who are much in earnest about their doctrines, and attach a greater amount of meaning to many of them than people in general, it commonly happens that the part which is thus comparatively active in their minds is that which was made by Calvin, or Knox, or some such person much nearer in character to themselves. The sayings of Christ coexist passively in their minds, producing hardly any effect beyond what is caused by mere listening to words so amiable and bland. There are many reasons, doubtless, why doctrines which are the badge of a sect retain more of their vitality than those common to all recognized sects, and why more pains are taken by teachers to keep their meaning alive; but one reason certainly is, that the peculiar doctrines are more questioned, and have to be oftener defended against open gainsayers. Both teachers and learners go to sleep at their post, as soon as there is no enemy in the field.

The same thing holds true, generally speaking, of all traditional doctrines—those of prudence and knowledge of life, as well as of morals or religion. All languages and literatures are full of general observations on life, both as to what it is, and how to conduct oneself in it; observations which everybody knows, which everybody repeats, or hears with acquiescence, which are received as truisms, yet of which most people first truly learn the meaning when experience,

generally of a painful kind, has made it a reality to them. How often, when smarting under some unforeseen misfortune or disappointment, does a person call to mind some proverb or common saying, familiar to him all his life, the meaning of which, if he had ever before felt it as he does now, would have saved him from the calamity. There are indeed reasons for this, other than the absence of discussion; there are many truths of which the full meaning *cannot* be realized until personal experience has brought it home. But much more of the meaning even of these would have been understood, and what was understood would have been far more deeply impressed on the mind, if the man had been accustomed to hear it argued *pro* and *con* by people who did understand it. The fatal tendency of mankind to leave off thinking about a thing when it is no longer doubtful, is the cause of half their errors. A contemporary author has well spoken of "the deep slumber of a decided opinion."

But what! (it may be asked) Is the absence of unanimity an indispensable condition of true knowledge? Is it necessary that some part of mankind should persist in error to enable any to realize the truth? Does a belief cease to be real and vital as soon as it is generally received; and is a proposition never thoroughly understood and felt unless some doubt of it remains? As soon as mankind have unanimously accepted a truth, does the truth perish within them? The highest aim and best result of improved intelligence, it has hitherto been thought, is to unite mankind more and more in the acknowledgment of all important truths; and does the intelligence only last as long as it has not achieved its object? Do the fruits of conquest perish by the very completeness of the victory?

I affirm no such thing. As mankind improve, the number of doctrines which are no longer disputed or doubted will be constantly on the increase: and the well-being of mankind may almost be measured by the number and gravity of the truths which have reached the point of being uncontested. The cessation, on one question after another, of serious controversy, is one of the necessary incidents of the consolidation of opinion; a consolidation as salutary in the case

of true opinions, as it is dangerous and noxious when the opinions are erroneous. But though this gradual narrowing of the bounds of diversity of opinion is necessary in both senses of the term, being at once inevitable and indispensable, we are not therefore obliged to conclude that all its consequences must be beneficial. The loss of so important an aid to the intelligent and living apprehension of a truth, as is afforded by the necessity of explaining it to, or defending it against, opponents, though not sufficient to outweigh, is no trifling drawback from, the benefit of its universal recognition. Where this advantage can no longer be had, I confess I should like to see the teachers of mankind endeavoring to provide a substitute for it; some contrivance for making the difficulties of the question as present to the learner's consciousness, as if they were pressed upon him by a dissentient champion, eager for his conversion.

But instead of seeking contrivances for this purpose, they have lost those they formerly had. The Socratic dialectics, so magnificently exemplified in the dialogues of Plato, were a contrivance of this description. They were essentially a negative discussion of the great question of philosophy and life, directed with consummate skill to the purpose of convincing anyone who had merely adopted the commonplaces of received opinion that he did not understand the subject —that he as yet attached no definite meaning to the doctrines he professed; in order that, becoming aware of his ignorance, he might be put in the way to obtain a stable belief, resting on a clear apprehension both of the meaning of doctrines and of their evidence. The school disputations of the Middle Ages had a somewhat similar object. They were intended to make sure that the pupil understood his own opinion, and (by necessary correlation) the opinion opposed to it, and could enforce the grounds of the one and confute those of the other. These last-mentioned contests had indeed the incurable defect that the premises appealed to were taken from authority, not from reason; and, as a discipline to the mind, they were in every respect inferior to the powerful dialectics which formed the intellects of the '*Socratici viri*'; but the modern mind owes far more to both than it is

generally willing to admit, and the present modes of education contain nothing which in the smallest degree supplies the place either of the one or of the other. A person who derives all his instruction from teachers or books, even if he escape the besetting temptation of contenting himself with cram, is under no compulsion to hear both sides; accordingly it is far from a frequent accomplishment, even among thinkers, to know both sides; and the weakest part of what everybody says in defense of his opinion is what he intends as a reply to antagonists. It is the fashion of the present time to disparage negative logic—that which points out weaknesses in theory or errors in practice, without establishing positive truths. Such negative criticism would indeed be poor enough as an ultimate result; but as a means to attaining any positive knowledge or conviction worthy the name, it cannot be valued too highly; and until people are again systematically trained to it, there will be few great thinkers, and a low general average of intellect, in any but the mathematical and physical departments of speculation. On any other subject no one's opinions deserve the name of knowledge, except so far as he has either had forced upon him by others, or gone through of himself, the same mental process which would have been required of him in carrying on an active controversy with opponents. That, therefore, which when absent, it is so indispensable, but so difficult, to create, how worse than absurd it is to forego, when spontaneously offering itself! If there are any persons who contest a received opinion, or who will do so if law or opinion will let them, let us thank them for it, open our minds to listen to them, and rejoice that there is some one to do for us what we otherwise ought, if we have any regard for either the certainty or the vitality of our convictions, to do with much greater labor for ourselves.

It still remains to speak of one of the principal causes which make diversity of opinion advantageous, and will continue to do so until mankind shall have entered a stage of intellectual advancement which at present seems at an incalculable distance. We have hitherto considered only

two possibilities: that the received opinion may be false, and some other opinion consequently true; or that, the received opinion being true, a conflict with the opposite error is essential to a clear apprehension and deep feeling of its truth. But there is a commoner case than either of these: when the conflicting doctrines, instead of being one true and the other false, share the truth between them; and the nonconforming opinion is needed to supply the remainder of the truth, of which the received doctrine embodies only a part. Popular opinions, on subjects not palpable to sense, are often true, but seldom or never the whole truth. They are a part of the truth; sometimes a greater, sometimes a smaller part, but exaggerated, distorted, and disjointed from the truths by which they ought to be accompanied and limited. Heretical opinions, on the other hand, are generally some of these suppressed and neglected truths, bursting the bonds which kept them down, and either seeking reconciliation with the truth contained in the common opinion, or fronting it as enemies, and setting themselves up, with similar exclusiveness, as the whole truth. The latter case is hitherto the most frequent, as, in the human mind, one-sidedness has always been the rule, and many-sidedness the exception. Hence, even in revolutions of opinion, one part of the truth usually sets while another rises. Even progress, which ought to superadd, for the most part only substitutes, one partial and incomplete truth for another; improvement consisting chiefly in this, that the new fragment of truth is more wanted, more adapted to the needs of the time, than that which it displaces. Such being the partial character of prevailing opinions, even when resting on a true foundation, every opinion which embodies somewhat of the portion of truth which the common opinion omits, ought to be considered precious, with whatever amount of error and confusion that truth may be blended. No sober judge of human affairs will feel bound to be indignant because those who force on our notice truths which we should otherwise have overlooked, overlook some of those which we see. Rather, one will think that so long as popular truth is one-sided, it is more desirable than otherwise that unpopular truth

should have one-sided assertors too; such being usually the most energetic, and the most likely to compel reluctant attention to the fragment of wisdom which they proclaim as if it were the whole.

Thus, in the eighteenth century, when nearly all the instructed, and all those of the uninstructed who were led by them, were lost in admiration of what is called civilization, and of the marvels of modern science, literature, and philosophy, and while greatly overrating the amount of unlikeness between the men of modern and those of ancient times, indulged the belief that the whole of the difference was in their own favor; with what a salutary shock did the paradoxes of Rousseau explode like bombshells in the midst, dislocating the compact mass of one-sided opinion, and forcing its elements to recombine in a better form and with additional ingredients. Not that the current opinions were on the whole farther from the truth than Rousseau's were: on the contrary, they were nearer to it: they contained more of positive truth, and very much less of error. Nevertheless there lay in Rousseau's doctrine, and has floated down the stream of opinion along with it, a considerable amount of exactly those truths which the popular opinion wanted; and these are the deposit which was left behind when the flood subsided. The superior worth of simplicity of life, the enervating and demoralizing effect of the trammels and hypocrisies of artificial society, are ideas which have never been entirely absent from cultivated minds since Rousseau wrote; and they will in time produce their due effect, though at present needing to be asserted as much as ever, and to be asserted by deeds, for words, on this subject, have nearly exhausted their power.

In politics, again, it is almost a commonplace, that a party of order or stability, and a party of progress or reform, are both necessary elements of a healthy state of political life; until the one or the other shall have so enlarged its mental grasp as to be a party equally of order and of progress, knowing and distinguishing what is fit to be preserved from what ought to be swept away. Each of these modes of thinking derives its utility from the deficiencies of the other;

but it is in a great measure the opposition of the other that keeps each within the limits of reason and sanity. Unless opinions favorable to democracy and to aristocracy, to property and to equality, to co-operation and to competition, to luxury and to abstinence, to sociality and individuality, to liberty and discipline, and all the other standing antagonisms of practical life, are expressed with equal freedom, and enforced and defended with equal talent and energy, there is no chance of both elements obtaining their due: one scale is sure to go up, and the other down. Truth, in the great practical concerns of life, is so much a question of the reconciling and combining of opposites, that very few have minds sufficiently capacious and impartial to make the adjustment with an approach to correctness, and it has to be made by the rough process of a struggle between combatants fighting under hostile banners. On any of the great open questions just enumerated, if either of the two opinions has a better claim than the other, not merely to be tolerated, but to be encouraged and countenanced, it is the one which happens at the particular time and place to be in a minority. That is the opinion which, for the time being, represents the neglected interests, the side of human well-being which is in danger of obtaining less than its share. I am aware that there is not, in this country, any intolerance of differences of opinion on most of these topics. They are adduced to show, by admitted and multiplied examples, the universality of the fact that only through diversity of opinion is there, in the existing state of human intellect, a chance of fair play to all sides of the truth. When there are persons to be found who form an exception to the apparent unanimity of the world on any subject, even if the world is in the right, it is always probable that dissentients have something worth hearing to say for themselves, and that truth would lose something by their silence.

It may be objected, "But *some* received principles, especially on the highest and most vital subjects, are more than half-truths. The Christian morality, for instance, is the whole truth on that subject, and if anyone teaches a morality which varies from it, he is wholly in error." As this is of

all cases the most important in practice, none can be fitter to test the general maxim. But before pronouncing what Christian morality is or is not, it would be desirable to decide what is meant by Christian morality. If it means the morality of the New Testament, I wonder that anyone who derives his knowledge of this from the book itself, can suppose that it was announced, or intended, as a complete doctrine of morals. The Gospel always refers to a pre-existing morality, and confines its precepts to the particulars in which that morality was to be corrected, or superseded by a wider and higher; expressing itself, moreover, in terms most general, often impossible to be interpreted literally, and possessing rather the impressiveness of poetry or eloquence than the precision of legislation. To extract from it a body of ethical doctrine, has never been possible without eking it out from the Old Testament, that is, from a system elaborate indeed, but in many respects barbarous, and intended only for a barbarous people. St. Paul, a declared enemy to this Judaical mode of interpreting the doctrine and filling up the scheme of his Master, equally assumes a pre-existing morality, namely that of the Greeks and Romans; and his advice to Christians is in a great measure a system of accommodation to that; even to the extent of giving an apparent sanction to slavery. What is called Christian, but should rather be termed theological, morality, was not the work of Christ or the Apostles, but is of much later origin, having been gradually built up by the Catholic church of the first five centuries, and though not implicitly adopted by moderns and Protestants, has been much less modified by them than might have been expected. For the most part, indeed, they have contented themselves with cutting off the additions which had been made to it in the Middle Ages, each sect supplying the place by fresh additions, adapted to its own character and tendencies. That mankind owe a great debt to this morality, and to its early teachers, I should be the last person to deny; but I do not scruple to say of it that it is, in many important points, incomplete and one-sided, and that unless ideas and feelings, not sanctioned by it, had contributed to the formation of European life and character, human

affairs would have been in a worse condition than they now are. Christian morality (so called) has all the characters of a reaction; it is, in great part, a protest against Paganism. Its ideal is negative rather than positive; passive rather than active; innocence rather than nobleness; abstinence from evil, rather than energetic pursuit of good; in its precepts (as has been well said) "thou shalt not" predominates unduly over "thou shalt." In its horror of sensuality, it made an idol of asceticism, which has been gradually compromised away into one of legality. It holds out the hope of heaven and the threat of hell, as the appointed and appropriate motives to a virtuous life: in this falling far below the best of the ancients, and doing what lies in it to give to human morality an essentially selfish character, by disconnecting each man's feelings of duty from the interests of his fellow-creatures, except so far as a self-interested inducement is offered to him for consulting them. It is essentially a doctrine of passive obedience; it inculcates submission to all authorities found established; who indeed are not to be actively obeyed when they command what religion forbids, but who are not to be resisted, far less rebelled against, for any amount of wrong to ourselves. And while, in the morality of the best pagan nations, duty to the State holds even a disproportionate place, infringing on the just liberty of the individual; in purely Christian ethics, that grand department of duty is scarcely noticed or acknowledged. It is in the Koran, not the New Testament, that we read the maxim—"A ruler who appoints any man to an office, when there is in his dominions another man better qualified for it, sins against God and against the State." What little recognition the idea of obligation to the public obtains in modern morality is derived from Greek and Roman sources, not from Christian; as, even in the morality of private life, whatever exists of magnanimity, highmindedness, personal dignity, even the sense of honor, is derived from the purely human, not the religious part of our education, and never could have grown out of a standard of ethics in which the only worth, professedly recognized, is that of obedience.

I am as far as anyone from pretending that these defects

are necessarily inherent in the Christian ethics in every manner in which it can be conceived, or that the many requisites of a complete moral doctrine which it does not contain do not admit of being reconciled with it. Far less would I insinuate this of the doctrines and precepts of Christ himself. I believe that the sayings of Christ are all that I can see any evidence of their having been intended to be; that they are irreconcilable with nothing which a comprehensive morality requires; that everything which is excellent in ethics may be brought within them, with no greater violence to their language than has been done to it by all who have attempted to deduce from them any practical system of conduct whatever. But it is quite consistent with this to believe that they contain, and were meant to contain, only a part of the truth; that many essential elements of the highest morality are among the things which are not provided for, nor intended to be provided for, in the recorded deliverances of the Founder of Christianity, and which have been entirely thrown aside in the system of ethics erected on the basis of those deliverances by the Christian Church. And this being so, I think it a great error to persist in attempting to find in the Christian doctrine that complete rule for our guidance which its author intended it to sanction and enforce, but only partially to provide. I believe, too, that this narrow theory is becoming a grave practical evil, detracting greatly from the moral training and instruction which so many well-meaning persons are now at length exerting themselves to promote. I much fear that by attempting to form the mind and feelings on an exclusively religious type, and discarding those secular standards (as for want of a better name they may be called) which heretofore coexisted with and supplemented the Christian ethics, receiving some of its spirit, and infusing into it some of theirs, there will result, and is even now resulting, a low, abject, servile type of character, which, submit itself as it may to what it deems the Supreme Will, is incapable of rising to or sympathizing in the conception of Supreme Goodness. I believe that other ethics than any which can be evolved from exclusively Christian sources,

must exist side by side with Christian ethics to produce the moral regeneration of mankind; and that the Christian system is no exception to the rule, that in an imperfect state of the human mind the interests of truth require a diversity of opinions. It is not necessary that in ceasing to ignore the moral truths not contained in Christianity men should ignore any of those which it does contain. Such prejudice, or oversight, when it occurs, is altogether an evil; but it is one from which we cannot hope to be always exempt, and must be regarded as the price paid for an inestimable good. The exclusive pretension made by a part of the truth to be the whole, must and ought to be protested against; and if a reactionary impulse should make the protestors unjust in their turn, this one-sidedness, like the other, may be lamented, but must be tolerated. If Christians would teach infidels to be just to Christianity, they should themselves be just to infidelity. It can do truth no service to blink the fact, known to all who have the most ordinary acquaintance with literary history, that a large portion of the noblest and most valuable moral teaching has been the work, not only of men who did not know, but of men who knew and rejected, the Christian faith.

I do not pretend that the most unlimited use of the freedom of enunciating all possible opinions would put an end to the evils of religious or philosophical sectarianism. Every truth which men of narrow capacity are in earnest about, is sure to be asserted, inculcated, and in many ways even acted on, as if no other truth existed in the world, or at all events none that could limit or qualify the first. I acknowledge that the tendency of all opinions to become sectarian is not cured by the freest discussion, but is often heightened and exacerbated thereby; the truth which ought to have been, but was not, seen, being rejected all the more violently because proclaimed by persons regarded as opponents. But it is not on the impassioned partisan, it is on the calmer and more disinterested bystander, that this collision of opinions works its salutary effect. Not the violent conflict between parts of the truth, but the quiet suppression of half of it, is the formidable evil; there is always hope

when people are forced to listen to both sides; it is when they attend only to one that errors harden into prejudices, and truth itself ceases to have the effect of truth, by being exaggerated into falsehood. And since there are few mental attributes more rare than that judicial faculty which can sit in intelligent judgment between two sides of a question, of which only one is represented by an advocate before it, truth has no chance but in proportion as every side of it, every opinion which embodies any fraction of the truth, not only finds advocates, but is so advocated as to be listened to.

We have now recognized the necessity to the mental well-being of mankind (on which all their other well-being depends) of freedom of opinion, and freedom of the expression of opinion, on four distinct grounds; which we will now briefly recapitulate.

First, if any opinion is compelled to silence, that opinion may, for aught we can certainly know, be true. To deny this is to assume our own infallibility.

Secondly, though the silenced opinion be an error, it may, and very commonly does, contain a portion of truth; and since the general or prevailing opinion on any subject is rarely or never the whole truth, it is only by the collision of adverse opinions that the remainder of the truth has any chance of being supplied.

Thirdly, even if the received opinion be not only true, but the whole truth; unless it is suffered to be, and actually is, vigorously and earnestly contested, it will, by most of those who receive it, be held in the manner of a prejudice, with little comprehension or feeling of its rational grounds. And not only this, but, fourthly, the meaning of the doctrine itself will be in danger of being lost, or enfeebled, and deprived of its vital effect on the character and conduct: the dogma becoming a mere formal profession, inefficacious for good, but cumbering the ground, and preventing the growth of any real and heartfelt conviction, from reason or personal experience.

Before quitting the subject of freedom of opinion, it is fit to take some notice of those who say that the free expression of all opinions should be permitted, on condition

that the manner be temperate, and do not pass the bounds of fair discussion. Much might be said on the impossibility of fixing where these supposed bounds are to be placed; for if the test be offense to those whose opinions are attacked, I think experience testifies that this offense is given whenever the attack is telling and powerful, and that every opponent who pushes them hard, and whom they find it difficult to answer, appears to them, if he shows any strong feeling on the subject, an intemperate opponent. But this, though an important consideration in a practical point of view, merges in a more fundamental objection. Undoubtedly the manner of asserting an opinion, even though it be a true one, may be very objectionable, and may justly incur severe censure. But the principal offenses of the kind are such as it is mostly impossible, unless by accidental self-betrayal, to bring home to conviction. The gravest of them is, to argue sophistically, to suppress facts or arguments, to misstate the elements of the case, or misrepresent the opposite opinion. But all this, even to the most aggravated degree, is so continually done in perfect good faith, by persons who are not considered, and in many other respects may not deserve to be considered, ignorant or incompetent, that it is rarely possible, on adequate grounds, conscientiously to stamp the misrepresentation as morally culpable; and still less could law presume to interfere with this kind of controversial misconduct. With regard to what is commonly meant by intemperate discussion, namely invective, sarcasm, personality, and the like, the denunciation of these weapons would deserve more sympathy if it were ever proposed to interdict them equally to both sides; but it is only desired to restrain the employment of them against the prevailing opinion: against the unprevailing they may not only be used without general disapproval, but will be likely to obtain for him who uses them the praise of honest zeal and righteous indignation. Yet whatever mischief arises from their use is greatest when they are employed against the comparatively defenseless; and whatever unfair advantage can be derived by any opinion from this mode of asserting it, accrues almost exclusively to received opinions. The worst offense of this kind which can be committed by a

polemic is to stigmatize those who hold the contrary opinion as bad and immoral men. To calumny of this sort, those who hold any unpopular opinion are peculiarly exposed, because they are in general few and uninfluential, and nobody but themselves feels much interested in seeing justice done them; but this weapon is, from the nature of the case, denied to those who attack a prevailing opinion: they can neither use it with safety to themselves, nor, if they could, would it do anything but recoil on their own cause. In general, opinions contrary to those commonly received can only obtain a hearing by studied moderation of language, and the most cautious avoidance of unnecessary offense, from which they hardly ever deviate even in a slight degree without losing ground; while unmeasured vituperation employed on the side of the prevailing opinion really does deter people from professing contrary opinions, and from listening to those who profess them. For the interest, therefore, of truth and justice, it is far more important to restrain this employment of vituperative language than the other; and, for example, if it were necessary to choose, there would be much more need to discourage offensive attacks on infidelity than on religion. It is, however, obvious that law and authority have no business with restraining either, while opinion ought, in every instance, to determine its verdict by the circumstances of the individual case; condemning everyone, on whichever side of the argument he places himself, in whose mode of advocacy either want of candor, or malignity, bigotry, or intolerance of feeling manifest themselves; but not inferring these vices from the side which a person takes, though it be the contrary side of the question of our own; and giving merited honor to everyone, whatever opinion he may hold, who has calmness to see and honesty to state what his opponents and their opinions really are, exaggerating nothing to their discredit, keeping nothing back which tells, or can be supposed to tell, in their favor. This is the real morality of public discussion; and if often violated, I am happy to think that there are many controversialists who to a great extent observe it, and a still greater number who conscientiously strive towards it.

CHAPTER III

OF INDIVIDUALITY, AS ONE OF THE ELEMENTS OF WELL-BEING

Such being the reasons which make it imperative that human beings should be free to form opinions, and to express their opinions without reserve; and such the baneful consequences to the intellectual, and through that to the moral nature of man, unless this liberty is either conceded, or asserted in spite of prohibition; let us next examine whether the same reasons do not require that men should be free to act upon their opinions—to carry these out in their lives, without hindrance, either physical or moral, from their fellow-men, so long as it is at their own risk and peril. This last proviso is of course indispensable. No one pretends that actions should be as free as opinions. On the contrary, even opinions lose their immunity when the circumstances in which they are expressed are such as to constitute their expression a positive instigation to some mischievous act. An opinion that corn-dealers are starvers of the poor, or that private property is robbery, ought to be unmolested when simply circulated through the press, but may justly incur punishment when delivered orally to an excited mob assembled before the house of a corn-dealer, or when handed about among the same mob in the form of a placard. Acts, of whatever kind, which without justifiable cause do harm to others, may be, and in the more important cases absolutely require to be, controlled by the unfavorable sentiments, and, when needful, by the active interference of mankind. The liberty of the individual must be thus far limited; he must not make himself a nuisance to other people. But if he refrains from molesting others in what

concerns them, and merely acts according to his own inclination and judgment in things which concern himself, the same reasons which show that opinion should be free, prove also that he should be allowed, without molestation, to carry his opinions into practice at his own cost. That mankind are not infallible; that their truths, for the most part, are only half-truths; that unity of opinion, unless resulting from the fullest and freest comparison of opposite opinions, is not desirable, and diversity not an evil, but a good, until mankind are much more capable than at present of recognizing all sides of the truth, are principles applicable to men's modes of action, not less than to their opinions. As it is useful that while mankind are imperfect there should be different opinions, so it is that there should be different experiments of living; that free scope should be given to varieties of character, short of injury to others; and that the worth of different modes of life should be proved practically, when anyone thinks fit to try them. It is desirable, in short, that in things which do not primarily concern others, individuality should assert itself. Where not the person's own character, but the traditions or customs of other people are the rule of conduct, there is wanting one of the principal ingredients of human happiness, and quite the chief ingredient of individual and social progress.

In maintaining this principle, the greatest difficulty to be encountered does not lie in the appreciation of means towards an acknowledged end, but in the indifference of persons in general to the end itself. If it were felt that the free development of individuality is one of the leading essentials of well-being; that it is not only a co-ordinate element with all that is designated by the terms civilization, instruction, education, culture, but is itself a necessary part and condition of all those things; there would be no danger that liberty should be undervalued, and the adjustment of the boundaries between it and social control would present no extraordinary difficulty. But the evil is, that individual spontaneity is hardly recognized by the common modes of thinking as having any intrinsic worth, or deserving any regard on its own account. The majority, being satisfied with

the ways of mankind as they now are (for it is they who make them what they are), cannot comprehend why those ways should not be good enough for everybody; and what is more, spontaneity forms no part of the ideal of the majority of moral and social reformers, but is rather looked on with jealousy, as a troublesome and perhaps rebellious obstruction to the general acceptance of what these reformers, in their own judgment, think would be best for mankind. Few persons, out of Germany, even comprehend the meaning of the doctrine which Wilhelm von Humboldt, so eminent both as a *savant* and as a politician, made the text of a treatise—that "the end of man, or that which is prescribed by the eternal or immutable dictates of reason, and not suggested by vague and transient desires, is the highest and most harmonious development of his powers to a complete and consistent whole;" that, therefore, the object "towards which every human being must ceaselessly direct his efforts, and on which especially those who design to influence their fellow-men must ever keep their eyes, is the individuality of power and development;" that for this there are two requisites, "freedom, and variety of situations;" and that from the union of these arise "individual vigor and manifold diversity," which combine themselves in "originality." [6]

Little, however, as people are accustomed to a doctrine like that of Von Humboldt, and surprising as it may be to them to find so high a value attached to individuality, the question, one must nevertheless think, can only be one of degree. No one's idea of excellence in conduct is that people should do absolutely nothing but copy one another. No one would assert that people ought not to put into their mode of life, and into the conduct of their concerns, any impress whatever of their own judgment, or of their own individual character. On the other hand, it would be absurd to pretend that people ought to live as if nothing whatever had been known in the world before they came into it; as if experience had as yet done nothing towards showing that one mode of existence, or of conduct, is preferable to another. Nobody denies that people should be so taught and trained in youth as to know and benefit by the ascertained results of human

experience. But it is the privilege and proper condition of a human being, arrived at the maturity of his faculties, to use and interpret experience in his own way. It is for him to find out what part of recorded experience is properly applicable to his own circumstances and character. The traditions and customs of other people are, to a certain extent, evidence of what their experience has taught *them:* presumptive evidence, and as such, have a claim to his deference. But in the first place, their experience may be too narrow, or they may not have interpreted it rightly. Secondly, their interpretation of experience may be correct, but unsuitable to him. Customs are made for customary circumstances and customary characters, and his circumstances or his character may be uncustomary. Thirdly, though the customs be both good as customs, and suitable to him, yet to conform to custom, merely *as* custom, does not educate or develop in him any of the qualities which are the distinctive endowment of a human being. The human faculties of perception, judgment, discriminative feeling, mental activity, and even moral preference, are exercised only in making a choice. He who does anything because it is the custom makes no choice. He gains no practice either in discerning or in desiring what is best. The mental and moral, like the muscular powers, are improved only by being used. The faculties are called into no exercise by doing a thing merely because others do it, no more than by believing a thing only because others believe it. If the grounds of an opinion are not conclusive to the person's own reason, his reason cannot be strengthened, but is likely to be weakened, by his adopting it; and if the inducements to an act are not such as are consentaneous to his own feelings and character (where affection, or the rights of others, are not concerned) it is so much done towards rendering his feelings and character inert and torpid, instead of active and energetic.

He who lets the world, or his own portion of it, choose his plan of life for him, has no need of any other faculty than the ape-like one of imitation. He who chooses his plan for himself, employs all his faculties. He must use observation to see, reasoning and judgments to foresee, ac-

tivity to gather materials for decision, discrimination to decide, and when he has decided, firmness and self-control to hold to his deliberate decision. And these qualities he requires and exercises exactly in proportion as the part of his conduct which he determines according to his own judgment and feelings is a large one. It is possible that he might be guided in some good path, and kept out of harm's way, without any of these things. But what will be his comparative worth as a human being? It really is of importance, not only what men do, but also what manner of men they are that do it. Among the works of man which human life is rightly employed in perfecting and beautifying, the first in importance surely is man himself. Supposing it were possible to get houses built, corn grown, battles fought, causes tried, and even churches erected and prayers said, by machinery—by automatons in human form—it would be a considerable loss to exchange for these automatons even the men and women who at present inhabit the more civilized parts of the world, and who assuredly are but starved specimens of what nature can and will produce. Human nature is not a machine to be built after a model, and set to do exactly the work prescribed for it, but a tree, which requires to grow and develop itself on all sides, according to the tendency of the inward forces which make it a living thing.

It will probably be conceded that it is desirable people should exercise their understandings, and that an intelligent following of custom, or even occasionally an intelligent deviation from custom, is better than a blind and simply mechanical adhesion to it. To a certain extent it is admitted that our understanding should be our own: but there is not the same willingness to admit that our desires and impulses should be our own likewise; or that to possess impulses of our own, and of any strength, is anything but a peril and a snare. Yet desires and impulses are as much a part of a perfect human being as beliefs and restraints; and strong impulses are only perilous when not properly balanced—when one set of aims and inclinations is developed into strength, while others, which ought to coexist with them, remain weak and inactive. It is not because men's desires

are strong that they act ill; it is because their consciences are weak. There is no natural connection between strong impulses and a weak conscience. The natural connection is the other way. To say that one person's desires and feelings are stronger and more various than those of another, is merely to say that he has more of the raw material of human nature, and is therefore capable, perhaps of more evil, but certainly of more good. Strong impulses are but another name for energy. Energy may be turned to bad uses; but more good may always be made of an energetic nature than of an indolent and impassive one. Those who have most natural feeling are always those whose cultivated feelings may be made the strongest. The same strong susceptibilities which make the personal impulses vivid and powerful, are also the source from whence are generated the most passionate love of virtue, and the sternest self-control. It is through the cultivation of these that society both does its duty and protects its interests; not by rejecting the stuff of which heroes are made because it knows not how to make them. A person whose desires and impulses are his own—are the expression of his own nature, as it has been developed and modified by his own culture—is said to have a character. One whose desires and impulses are not his own, has no character, no more than a steam-engine has a character. If, in addition to being his own, his impulses are strong, and are under the government of a strong will, he has an energetic character. Whoever thinks that individuality of desires and impulses should not be encouraged to unfold itself, must maintain that society has no need of strong natures—is not the better for containing many persons who have much character—and that a high general average of energy is not desirable.

In some early states of society, these forces might be, and were, too much ahead of the power which society then possessed of disciplining and controlling them. There has been a time when the element of spontaneity and individuality was in excess, and the social principle had a hard struggle with it. The difficulty then was to induce men of strong bodies or minds to pay obedience to any rules which

required them to control their impulses. To overcome this difficulty, law and discipline, like the Popes struggling against the Emperors, asserted a power over the whole man, claiming to control all his life in order to control his character—which society had not found any other sufficient means of binding. But society has now fairly got the better of individuality; and the danger which threatens human nature is not the excess, but the deficiency, of personal impulses and preferences. Things are vastly changed since the passions of those who were strong by station or by personal endowment were in a state of habitual rebellion against laws and ordinances, and required to be rigorously chained up to enable the persons within their reach to enjoy any particle of security. In our times, from the highest class of society down to the lowest, everyone lives as under the eye of a hostile and dreaded censorship. Not only in what concerns others, but in what concerns only themselves, the individual or the family do not ask themselves—what do I prefer? or, what would suit my character and disposition? or, what would allow the best and highest in me to have fair play, and enable it to grow and thrive? They ask themselves, what is suitable to my position? what is usually done by persons of my station and pecuniary circumstances? or (worse still) what is usually done by persons of a station and circumstances superior to mine? I do not mean that they choose what is customary in preference to what suits their own inclination. It does not occur to them to have any inclination, except for what is customary. Thus the mind itself is bowed to the yoke: even in what people do for pleasure, conformity is the first thing thought of; they like crowds; they exercise choice only among things commonly done: peculiarity of taste, eccentricity of conduct, are shunned equally with crimes: until by dint of not following their own nature they have no nature to follow: their human capacities are withered and starved: they become incapable of any strong wishes or native pleasures, and are generally without either opinions or feelings of home growth, or properly their own. Now is this, or is it not, the desirable condition of human nature?

It is so, on the Calvinistic theory. According to that, the

one great offense of man is self-will. All the good of which humanity is capable is comprised in obedience. You have no choice; thus you must do, and no otherwise: "whatever is not a duty, is a sin." Human nature being radically corrupt, there is no redemption for anyone until human nature is killed within him. To one holding this theory of life, crushing out any of the human faculties, capacities, and susceptibilities, is no evil: man needs no capacity, but that of surrendering himself to the will of God: and if he uses any of his faculties for any other purpose but to do that supposed will more effectually, he is better without them. This is the theory of Calvinism; and it is held, in a mitigated form, by many who do not consider themselves Calvinists; the mitigation consisting in giving a less ascetic interpretation to the alleged will of God; asserting it to be his will that mankind should gratify some of their inclinations; of course not in the manner they themselves prefer, but in the way of obedience, that is, in a way prescribed to them by authority; and, therefore, by the necessary condition of the case, the same for all.

In some such insidious form there is at present a strong tendency to this narrow theory of life, and to the pinched and hidebound type of human character which it patronizes. Many persons, no doubt, sincerely think that human beings thus cramped and dwarfed are as their Maker designed them to be; just as many have thought that trees are a much finer thing when clipped into pollards, or cut out into figures of animals, than as nature made them. But if it be any part of religion to believe that man was made by a good Being, it is more consistent with that faith to believe that this Being gave all human faculties that they might be cultivated and unfolded, not rooted out and consumed, and that he takes delight in every nearer approach made by his creatures to the ideal conception embodied in them, every increase in any of their capabilities of comprehension, of action, or of enjoyment. There is a different type of human excellence from the Calvinistic: a conception of humanity as having its nature bestowed on it for other purposes than merely to be abnegated. "Pagan self-assertion" is one of the elements of

human worth, as well as "Christian self-denial." [7] There is a Greek idea of self-development, which the Platonic and Christian ideal of self-government blends with, but does not supersede. It may be better to be a John Knox than an Alcibiades, but it is better to be a Pericles than either; nor would a Pericles, if we had one in these days, be without anything good which belonged to John Knox.

It is not by wearing down into uniformity all that is individual in themselves, but by cultivating it, and calling it forth, within the limits imposed by the rights and interests of others, that human beings become a noble and beautiful object of contemplation; and as the works partake the character of those who do them, by the same process human life also becomes rich, diversified, and animating, furnishing more abundant aliment to high thoughts and elevating feelings, and strengthening the tie which binds every individual to the race, by making the race infinitely better worth belonging to. In proportion to the development of his individuality, each person becomes more valuable to himself, and is therefore capable of being more valuable to others. There is a greater fullness of life about his own existence, and when there is more life in the units there is more in the mass which is composed of them. As much compression as is necessary to prevent the stronger specimens of human nature from encroaching on the rights of others cannot be dispensed with; but for this there is ample compensation even in the point of view of human development. The means of development which the individual loses by being prevented from gratifying his inclinations to the injury of others, are chiefly obtained at the expense of the development of other people. And even to himself there is a full equivalent in the better development of the social part of his nature, rendered possible by the restraint put upon the selfish part. To be held to rigid rules of justice for the sake of others, develops the feelings and capacities which have the good of others for their object. But to be restrained in things not affecting their good, by their mere displeasure, develops nothing valuable, except such force of character as may unfold itself in resisting the restraint. If acquiesced in, it

dulls and blunts the whole nature. To give any fair play to the nature of each, it is essential that different persons should be allowed to lead different lives. In proportion as this latitude has been exercised in any age, has that age been noteworthy to posterity. Even despotism does not produce its worst effects, so long as individuality exists under it; and whatever crushes individuality is despotism, by whatever name it may be called, and whether it professes to be enforcing the will of God or the injunctions of men.

Having said that the individuality is the same thing with development, and that it is only the cultivation of individuality which produces, or can produce, well-developed human beings, I might here close the argument: for what more or better can be said of any condition of human affairs than that it brings human beings themselves nearer to the best thing they can be? or what worse can be said of any obstruction to good than that it prevents this? Doubtless, however, these considerations will not suffice to convince those who most need convincing; and it is necessary further to show that these developed human beings are of some use to the undeveloped—to point out to those who do not desire liberty, and would not avail themselves of it, that they may be in some intelligible manner rewarded for allowing other people to make use of it without hindrance.

In the first place, then, I would suggest that they might possibly learn something from them. It will not be denied by anybody that originality is a valuable element in human affairs. There is always need of persons not only to discover new truths, and point out when what were once truths are true no longer, but also to commence new practices, and set the example of more enlightened conduct, and better taste and sense in human life. This cannot well be gainsaid by anybody who does not believe that the world has already attained perfection in all its ways and practices. It is true that this benefit is not capable of being rendered by everybody alike: there are but few persons, in comparison with the whole of mankind, whose experiments, if adopted by others, would be likely to be any improvement on established practice. But these few are the salt of the earth; without

them, human life would become a stagnant pool. Not only is it they who introduce good things which did not before exist; it is they who keep the life in those which already exist. If there were nothing new to be done, would human intellect cease to be necessary? Would it be a reason why those who do the old things should forget why they are done, and do them like cattle, not like human beings? There is only too great a tendency in the best beliefs and practices to degenerate into the mechanical; and unless there were a succession of persons whose ever-recurring originality prevents the grounds of those beliefs and practices from becoming merely traditional, such dead matter would not resist the smallest shock from anything really alive, and there would be no reason why civilization should not die out, as in the Byzantine Empire. Persons of genius, it is true, are, and are always likely to be, a small minority; but in order to have them, it is necessary to preserve the soil in which they grow. Genius can only breathe freely in an *atmosphere* of freedom. Persons of genius are, *ex vi termini*, more individual than any other people—less capable, consequently, of fitting themselves, without hurtful compression, into any of the small number of molds which society provides in order to save its members the trouble of forming their own character. If from timidity they consent to be forced into one of these molds, and to let all that part of themselves which cannot expand under the pressure remain unexpanded, society will be little the better for their genius. If they are of a strong character, and break their fetters, they become a mark for the society which has not succeeded in reducing them to commonplace, to point out with solemn warning as 'wild,' 'erratic,' and the like; much as if one should complain of the Niagara river for not flowing smoothly between its banks like a Dutch canal.

I insist thus emphatically on the importance of genius, and the necessity of allowing it to unfold itself freely both in thought and in practice, being well aware that no one will deny the position in theory, but knowing also that almost everyone, in reality, is totally indifferent to it. People think genius a fine thing if it enables a man to write an exciting

poem, or paint a picture. But in its true sense, that of originality in thought and action, though no one says that it is not a thing to be admired, nearly all, at heart, think that they can do very well without it. Unhappily this is too natural to be wondered at. Originality is the one thing which unoriginal minds cannot feel the use of. They cannot see what it is to do for them: how should they? If they could see what it would do for them, it would not be originality. The first service which originality has to render them, is that of opening their eyes: which being once fully done, they would have a chance of being themselves original. Meanwhile, recollecting that nothing was ever yet done which someone was not the first to do, and that all good things which exist are the fruits of originality, let them be modest enough to believe that there is something still left for it to accomplish, and assure themselves that they are more in need of originality, the less they are conscious of the want.

In sober truth, whatever homage may be professed, or even paid, to real or supposed mental superiority, the general tendency of things throughout the world is to render mediocrity the ascendant power among mankind. In ancient history, in the Middle Ages, and in a diminishing degree through the long transition from feudality to the present time, the individual was a power in himself; and if he had either great talents or a high social position, he was a considerable power. At present individuals are lost in the crowd. In politics it is almost a triviality to say that public opinion now rules the world. The only power deserving the name is that of masses, and of governments while they make themselves the organ of the tendencies and instincts of masses. This is as true in the moral and social relations of private life as is public transactions. Those whose opinions go by the name of public opinion are not always the same sort of public: in America they are the whole white population; in England, chiefly the middle class. But they are always a mass, that is to say, collective mediocrity. And what is a still greater novelty, the mass do not now take their opinions from dignitaries in Church or State, from os-

tensible leaders, or from books. Their thinking is done for them by men much like themselves, addressing them or speaking in their name, on the spur of the moment, through the newspapers. I am not complaining of all this. I do not assert that anything better is compatible, as a general rule, with the present low state of the human mind. But that does not hinder the government of mediocrity from being mediocre government. No government by a democracy or a numerous aristocracy, either in its political arts or in the opinions, qualities, and tone of mind which it fosters, ever did or could rise above mediocrity, except in so far as the sovereign. Many have let themselves be guided (which in their best times they always have done) by the counsels and influence of a more highly gifted and instructed one or few. The initiation of all wise or noble things comes and must come from individuals; generally at first from some one individual. The honor and glory of the average man is that he is capable of following that initiative; that he can respond internally to wise and noble things, and be led to them with his eyes open. I am not countenancing the sort of 'hero-worship' which applauds the strong man of genius for forcibly seizing on the government of the world and making it do his bidding in spite of itself. All he can claim is, freedom to point out the way. The power of compelling others into it is not only inconsistent with the freedom and development of all the rest, but corrupting to the strong man himself. It does seem, however, that when the opinions of masses of merely average men are everywhere become or becoming the dominant power, the counterpoise and corrective to that tendency would be the more and more pronounced individuality of those who stand on the higher eminences of thought. It is in these circumstances most especially, that exceptional individuals, instead of being deterred, should be encouraged in acting differently from the mass. In other times there was no advantage in their doing so, unless they acted not only differently but better. In this age, the mere example of nonconformity, the mere refusal to bend the knee to custom, is itself a service. Precisely because the tyranny of opinion is such as to make

eccentricity a reproach, it is desirable, in order to break through that tyranny, that people should be eccentric. Eccentricity has always abounded when and where strength of character has abounded; and the amount of eccentricity in a society has generally been proportional to the amount of genius, mental vigor, and moral courage it contained. That so few now dare to be eccentric marks the chief danger of the time.

I have said that it is important to give the freest scope possible to uncustomary things, in order that it may in time appear which of these are fit to be converted into customs. But independence of action, and disregard of custom, are not solely deserving of encouragement for the chance they afford that better modes of action, and customs more worthy of general adoption, may be struck out; nor is it only persons of decided mental superiority who have a just claim to carry on their lives in their own way. There is no reason that all human existence should be constructed on some one or some small number of patterns. If a person possesses any tolerable amount of common sense and experience, his own mode of laying out his existence is the best, not because it is the best in itself, but because it is his own mode. Human beings are not like sheep; and even sheep are not undistinguishably alike. A man cannot get a coat or a pair of boots to fit him unless they are either made to his measure, or he has a whole warehouseful to choose from: and is it easier to fit him with a life than with a coat, or are human beings more like one another in their whole physical and spiritual conformation than in the shape of their feet? If it were only that people have diversities of taste, that is reason enough for not attempting to shape them all after one model. But different persons also require different conditions for their spiritual development; and can no more exist healthily in the same moral, than all the variety of plants can in the same physical, atmosphere and climate. The same things which are helps to one person towards the cultivation of his higher nature are hindrances to another. The same mode of life is a healthy excitement to one, keeping all his faculties of action and enjoyment in their

best order, while to another it is a distracting burden, which suspends or crushes all internal life. Such are the differences among human beings in their sources of pleasure, their susceptibilities of pain, and the operation on them of different physical and moral agencies, that unless there is a corresponding diversity in their modes of life, they neither obtain their fair share of happiness, nor grow up to the mental, moral and aesthetic stature of which their nature is capable. Why then should tolerance, as far as the public sentiment is concerned, extend only to tastes and modes of life which extort acquiescence by the multitude of their adherents? Nowhere (except in some monastic institutions) is diversity of taste entirely unrecognized; a person may, without blame, either like or dislike rowing, or smoking, or music, or athletic exercises, or chess, or cards, or study, because both those who like each of these things, and those who dislike them, are too numerous to be put down. But the man, and still more the woman, who can be accused either of doing "what nobody does," or of not doing "what everybody does," is the subject of as much depreciatory remark as if he or she had committed some grave moral delinquency. Persons require to possess a title or some other badge of rank, or of the consideration of people of rank, to be able to indulge somewhat in the luxury of doing as they like without detriment of their estimation. To indulge somewhat, I repeat: for whoever allow themselves much of that indulgence, incur the risk of something worse than disparaging speeches—they are in peril of a commission *de lunatico*, and of having their property taken from them and given to their relations.[8]

There is one characteristic of the present direction of public opinion peculiarly calculated to make it intolerant of any marked demonstration of individuality. The general average of mankind are not only moderate in intellect, but also moderate in inclinations: they have no tastes or wishes strong enough to incline them to do anything unusual, and they consequently do not understand those who have, and class all such with the wild and intemperate whom they are accustomed to look down upon. Now, in addition to this fact which is general, we have only to suppose that a strong move-

ment has set in towards the improvement of morals, and it is evident what we have to expect. In these days such a movement has set in; much has actually been effected in the way of increased regularity of conduct and discouragement of excesses; and there is a philanthropic spirit abroad, for the exercise of which there is no more inviting field than the moral and prudential improvement of our fellow-creatures. These tendencies of the times cause the public to be more disposed than at most former periods to prescribe general rules of conduct, and endeavor to make everyone conform to the approved standard. And that standard, express or tacit, is to desire nothing strongly. Its idea of character is to be without any marked character; to maim by compression, like a Chinese lady's foot, every part of human nature which stands out prominently, and tends to make the person markedly dissimilar in outline to commonplace humanity.

As is usually the case with ideals which exclude one-half of what is desirable, the present standard of approbation produces only an inferior imitation of the other half. Instead of great energies guided by vigorous reason, and strong feelings strongly controlled by a conscientious will, its result is weak feelings and weak energies, which therefore can be kept in outward conformity to rule without any strength either of will or of reason. Already energetic characters on any large scale are becoming merely traditional. There is now scarcely any outlet for energy in this country except business. The energy expended in this may still be regarded as considerable. What little is left from that employment is expended on some hobby; which may be a useful, even a philanthropic hobby, but is always some one thing, and generally a thing of small dimensions. The greatness of England is now all collective; individually small, we only appear capable of anything great by our habit of combining; and with this our moral and religious philanthropists are perfectly contented. But it was men of another stamp than this that made England what it has been; and men of another stamp will be needed to prevent its decline.

The despotism of custom is everywhere the standing

hindrance to human advancement, being in unceasing antagonism to that disposition to aim at something better than customary, which is called, according to circumstances, the spirit of liberty, or that of progress or improvement. The spirit of improvement is not always a spirit of liberty, for it may aim at forcing improvements on an unwilling people; and the spirit of liberty, in so far as it resists such attempts, may ally itself locally and temporarily with the opponents of improvement; but the only unfailing and permanent source of improvement is liberty, since by it there are as many possible independent centers of improvement as there are individuals. The progressive principle, however, in either shape, whether as the love of liberty or of improvement, is antagonistic to the sway of custom, involving at least emancipation from that yoke; and the contest between the two constitutes the chief interest of the history of mankind. The greater part of the world has, properly speaking, no history, because the despotism of custom is complete. This is the case over the whole East. Custom is there, in all things, the final appeal; justice and right mean conformity to custom; the argument of custom no one, unless some tyrant intoxicated with power, thinks of resisting. And we see the result. Those nations must once have had originality; they did not start out on the ground populous, lettered, and versed in many of the arts of life; they made themselves all this, and were then the greatest and most powerful nations of the world. What are they now? The subjects or dependents of tribes whose forefathers wandered in the forests when theirs had magnificent palaces and gorgeous temples, but over whom custom exercised only a divided rule with liberty and progress. A people, it appears, may be progressive for a certain length of time, and then stop: when does it stop? When it ceases to possess individuality. If a similar change should befall the nations of Europe, it will not be in exactly the same shape: the despotism of custom with which these nations are threatened is not precisely stationariness. It proscribes singularity, but it does not preclude change, provided all change together. We have discarded the fixed costumes of our forefathers; everyone must still dress like other people,

but the fashion may change once or twice a year. We thus take care that when there is a change, it shall be for change's sake, and not from any idea of beauty or convenience; for the same idea of beauty or convenience would not strike all the world at the same moment, and be simultaneously thrown aside by all at another moment. But we are progressive as well as changeable: we continually make new inventions in mechanical things, and keep them until they are again superseded by better; we are eager for improvement in politics, in education, even in morals, though in this last our idea of improvement chiefly consists in persuading or forcing other people to be as good as ourselves. It is not progress that we object to; on the contrary, we flatter ourselves that we are the most progressive people who ever lived. It is individuality that we war against: we should think we had done wonders if we had made ourselves all alike; forgetting that the unlikeness of one person to another is generally the first thing which draws the attention of either to the imperfection of his own type, and the superiority of another, or the possibility, by combining the advantages of both, of producing something better than either. We have a warning example in China—a nation of much talent, and, in some respects, even wisdom, owing to the rare good fortune of having been provided at an early period with a particularly good set of customs, the work, in some measure, of men to whom even the most enlightened European must accord, under certain limitations, the title of sages and philosophers. They are remarkable, too, in the excellence of their apparatus for impressing, as far as possible, the best wisdom they possess upon every mind in the community, and securing that those who have appropriated most of it shall occupy the posts of honor and power. Surely the people who did this have discovered the secret of human progressiveness, and must have kept themselves steadily at the head of the movement of the world. On the contrary, they have become stationary—have remained so for thousands of years; and if they are ever to be farther improved, it must be by foreigners. They have succeeded beyond all hope in what English philanthropists are so industriously working at—in making a

people all alike, all governing their thoughts and conduct by the same maxims and rules; and these are the fruits. The modern regime of public opinion is, in an unorganized form, what the Chinese educational and political systems are in an organized; and unless individuality shall be able successfully to assert itself against this yoke, Europe, notwithstanding its noble antecedents and its professed Christianity, will tend to become another China.

What is it that has hitherto preserved Europe from this lot? What has made the European family of nations an improving, instead of a stationary portion of mankind? Not any superior excellence in them, which, when it exists, exists as the effect not as the cause; but their remarkable diversity of character and culture. Individuals, classes, nations, have been extremely unlike one another: they have struck out a great variety of paths, each leading to something valuable; and although at every period those who traveled in different paths have been intolerant of one another, and each would have thought it an excellent thing if all the rest could have been compelled to travel his road, their attempts to thwart each other's development have rarely had any permanent success, and each has in time endured to receive the good which the others have offered. Europe is, in my judgment, wholly indebted to this plurality of paths for its progressive and many-sided development. But it already begins to possess this benefit in a considerably less degree. It is decidedly advancing towards the Chinese ideal of making all people alike. M. de Tocqueville, in his last important work, remarks how much more the Frenchmen of the present day resemble one another than did those even of the last generation. The same remark might be made of Englishmen in a far greater degree. In a passage already quoted from Wilhelm von Humboldt, he points out two things as necessary conditions of human development, because necessary to render people unlike one another: namely, freedom, and variety of situations. The second of these two conditions is in this country every day diminishing. The circumstances which surround different classes and individuals, and shape their characters, are daily becoming more assimilated. Formerly, different

ranks, different neighborhoods, different trades and professions, lived in what might be called different worlds; at present to a great degree in the same. Comparatively speaking, they now read the same things, listen to the same things, see the same things, go to the same places, have their hopes and fears directed to the same objects, have the same rights and liberties, and the same means of asserting them. Great as are the differences of position which remain, they are nothing to those which have ceased. And the assimilation is still proceeding. All the political changes of the age promote it, since they all tend to raise the low and to lower the high. Every extension of education promotes it, because education brings people under common influences, and gives them access to the general stock of facts and sentiments. Improvement in the means of communication promotes it, by bringing the inhabitants of distant places into personal contact, and keeping up a rapid flow of changes of residence between one place and another. The increase of commerce and manufactures promotes it, by diffusing more widely the advantages of easy circumstances, and opening all objects of ambition, even the highest, to general competition, whereby the desire of rising becomes no longer the character of a particular class, but of all classes. A more powerful agency than even all these, in bringing about a general similarity among mankind, is the complete establishment, in this and other free countries, of the ascendancy of public opinion in the State. As the various social eminences which enabled persons entrenched on them to disregard the opinion of the multitude gradually become leveled; as the very idea of resisting the will of the public, when it is positively known that they have a will, disappears more and more from the minds of practical politicians: there ceases to be any social support for nonconformity—any substantive power in society which, itself opposed to the ascendancy of numbers, is interested in taking under its protection opinions and tendencies at variance with those of the public.

The combination of all these causes forms so great a mass of influences hostile to individuality, that it is not easy to see how it can stand its ground. It will do so with increasing

difficulty, unless the intelligent part of the public can be made to feel its value—to see that it is good there should be differences, even though not for the better, even though, as it may appear to them, some should be for the worse. If the claims of individuality are ever to be asserted, the time is now, while much is still wanting to complete the enforced assimilation. It is only in the earlier stages that any stand can be successfully made against the encroachment. The demand that all other people shall resemble ourselves grows by what it feeds on. If resistance waits till life is reduced *nearly* to one uniform type, all deviations from that type will come to be considered impious, immoral, even monstrous and contrary to nature. Mankind speedily become unable to conceive diversity, when they have been for some time unaccustomed to see it.

CHAPTER IV

OF THE LIMITS TO THE AUTHORITY OF SOCIETY OVER THE INDIVIDUAL

What, then, is the rightful limit to the sovereignty of the individual over himself? Where does the authority of society begin? How much of human life should be assigned to individuality, and how much to society?

Each will receive its proper share, if each has that which more particularly concerns it. To individuality should belong the part of life in which it is chiefly the individual that is interested; to society, the part which chiefly interests society.

Though society is not founded on a contract, and though no good purpose is answered by inventing a contract in order to deduce social obligations from it, everyone who receives the protection of society owes a return for the benefit, and the fact of living in society renders it indispensable that each should be bound to observe a certain line of conduct towards the rest. This conduct consists, *first*, in not injuring the interests of one another; or rather certain interests, which, either by express legal provision or by tacit understanding, ought to be considered as rights; and *secondly*, in each person's bearing his share (to be fixed on some equitable principle) of the labors and sacrifices incurred for defending the society or its members from injury and molestation. These conditions society is justified in enforcing, at all costs to those who endeavor to withhold fulfillment. Nor is this all that society may do. The acts of an individual may be hurtful to others, or wanting in due consideration for their welfare, without going to the length of violating any of their

constituted rights. The offender may then be justly punished by opinion, though not by law. As soon as any part of a person's conduct affects prejudicially the interests of others, society has jurisdiction over it, and the question whether the general welfare will or will not be promoted by interfering with it, becomes open to discussion. But there is no room for entertaining any such question when a person's conduct affects the interests of no persons besides himself, or need not affect them unless they like (all the persons concerned being of full age, and the ordinary amount of understanding). In all such cases, there should be perfect freedom, legal and social, to do the action and stand the consequences.

It would be a great misunderstanding of this doctrine to suppose that it is one of selfish indifference, which pretends that human beings have no business with each other's conduct in life, and that they should not concern themselves about the well-doing or well-being of one another, unless their own interest is involved. Instead of any diminution, there is need of a great increase of disinterested exertion to promote the good of others. But disinterested benevolence can find other instruments to persuade people to their good than whips and scourges, either of the literal or the metaphorical sort. I am the last person to undervalue the self-regarding virtues: they are only second in importance, if even second, to the social. It is equally the business of education to cultivate both. But even education works by conviction and persuasion as well as by compulsion, and it is by the former only that, when the period of education is passed, the self-regarding virtues should be inculcated. Human beings owe to each other help to distinguish the better from the worse, and encouragement to choose the former and avoid the latter. They should be forever stimulating each other to increased exercise of their higher faculties, and increased direction of their feelings and aims towards wise instead of foolish, elevating instead of degrading, objects and contemplations. But neither one person, nor any number of persons, is warranted in saying to another human creature of ripe years, that he shall not do with his life for his own benefit what he chooses to do with it. He is the person most interested in his own well-being:

the interest which any other person, except in cases of strong personal attachment, can have in it, is trifling, compared with that which he himself has; the interest which society has in him individually (except as to his conduct to others) is fractional, and altogether indirect; while with respect to his own feelings and circumstances, the most ordinary man or woman has means of knowledge immeasurably surpassing those that can be possessed by anyone else. The interference of society to overrule his judgment and purposes in what only regards himself must be grounded on general presumptions; which may be altogether wrong, and even if right, are as likely as not to be misapplied to individual cases, by persons no better acquainted with the circumstances of such cases than those are who look at them merely from without. In this department, therefore, of human affairs, individuality has its proper field of action. In the conduct of human beings towards one another it is necessary that general rules should for the most part be observed, in order that people may know what they have to expect; but in each person's own concerns his individual spontaneity is entitled to free exercise. Considerations to aid his judgment, exhortations to strengthen his will, may be offered to him, even obtruded on him, by others: but he himself is the final judge. All errors which he is likely to commit against advice and warning are far outweighed by the evil of allowing others to constrain him to what they deem his good.

I do not mean that the feelings with which a person is regarded by others ought not to be in any way affected by his self-regarding qualities or deficiencies. This is neither possible nor desirable. If he is eminent in any of the qualities which conduce to his own good, he is, so far, a proper object of admiration. He is so much the nearer to the ideal perfection of human nature. If he is grossly deficient in those qualities, a sentiment the opposite of admiration will follow. There is a degree of folly, and a degree of what may be called (though the phrase is not unobjectionable) lowness or depravation of taste, which, though it cannot justify doing

harm to the person who manifests it, renders him necessarily and properly a subject of distaste, or, in extreme cases, even of contempt: a person could not have the opposite qualities in due strength without entertaining these feelings. Though doing no wrong to anyone, a person may so act as to compel us to judge him, and feel to him, as a fool, or as a being of an inferior order; and since this judgment and feeling are a fact which he would prefer to avoid, it is doing him a service to warn him of it beforehand, as of any other disagreeable consequence to which he exposes himself. It would be well, indeed, if this good office were much more freely rendered than the common notions of politeness at present permit, and if one person could honestly point out to another that he thinks him in fault, without being considered unmannerly or presuming. We have a right, also, in various ways, to act upon our unfavorable opinion of anyone, not to the oppression of his individuality, but in the exercise of ours. We are not bound, for example, to seek his society; we have a right to avoid it (though not to parade the avoidance), for we have a right to choose the society most acceptable to us. We have a right, and it may be our duty, to caution others against him, if we think his example or conversation likely to have a pernicious effect on those with whom he associates. We may give others a preference over him in optional good offices, except those which tend to his improvement. In these various modes a person may suffer very severe penalties at the hands of others for faults which directly concern only himself; but he suffers these penalties only in so far as they are the natural and, as it were, the spontaneous consequences of the faults themselves, not because they are purposely inflicted on him for the sake of punishment. A person who shows rashness, obstinacy, self-conceit—who cannot live within moderate means—who cannot restrain himself from hurtful indulgences—who pursues animal pleasures at the expense of those of feeling and intellect—must expect to be lowered in the opinion of others, and to have a less share of their favorable sentiments; but of this he has no right to complain, unless he has merited their favor by special excellence in his

social relations, and has thus established a title to their good offices, which is not affected by his demerits towards himself.

What I contend for is, that the inconveniences which are strictly inseparable from the unfavorable judgment of others, are the only ones to which a person should ever be subjected for that portion of his conduct and character which concerns his own good, but which does not affect the interest of others in their relations with him. Acts injurious to others require a totally different treatment. Encroachment on their rights; infliction on them of any loss or damage not justified by his own rights; falsehood or duplicity in dealing with them; unfair or ungenerous use of advantages over them; even selfish abstinence from defending them against injury—these are fit objects of moral reprobation, and, in grave cases, of moral retribution and punishment. And not only these acts, but the dispositions which lead to them, are properly immoral, and fit subjects of disapprobation which may rise to abhorrence. Cruelty of disposition; malice and ill-nature; that most antisocial and odious of all passions, envy; dissimulation and insincerity, irascibility on insufficient cause, and resentment disproportioned to the provocation; the love of domineering over other; the desire to engross more than one's share of advantages (the πλεονεξία of the Greeks); the pride which derives gratification from the abasement of others; the egotism which thinks self and its concerns more important than everything else, and decides all doubtful questions in its own favor;—these are moral vices, and constitute a bad and odious moral character: unlike the self-regarding faults previously mentioned, which are not properly immoralities, and to whatever pitch they may be carried, do not constitute wickedness. They may be proofs of any amount of folly, or want of personal dignity and self-respect; but they are only a subject of moral reprobation when they involve a breach of duty to others, for whose sake the individual is bound to have care for himself. What are called duties to ourselves are not socially obligatory, unless circumstances render them at the same time duties to others. The

term 'duty to oneself,' when it means anything more than prudence, means self-respect or self-development, and for none of these is anyone accountable to his fellow-creatures, because for none of them is it for the good of mankind that he be held accountable to them.

The distinction between the loss of consideration which a person may rightly incur by defect of prudence or of personal dignity, and the reprobation which is due to him for an offense against the rights of others, is not a merely nominal distinction. It makes a vast difference both in our feelings and in our conduct towards him whether he displeases us in things in which we think we have a right to control him, or in things in which we know that we have not. If he displeases us, we may express our distaste, and we may stand aloof from a person as well as from a thing that displeases us; but we shall not therefore feel called on to make his life uncomfortable. We shall reflect that he already bears, or will bear, the whole penalty of his error; if he spoils his life by mismanagement, we shall not, for that reason, desire to spoil it still further: instead of wishing to punish him, we shall rather endeavor to alleviate his punishment, by showing him how he may avoid or cure the evils his conduct tends to bring upon him. He may be to us an object of pity, perhaps of dislike, but not of anger or resentment; we shall not treat him like an enemy of society: the worst we shall think ourselves justified in doing is leaving him to himself, if we do not interfere benevolently by showing interest or concern for him. It is far otherwise if he has infringed the rules necessary for the protection of his fellow-creatures, individually or collectively. The evil consequences of his acts do not then fall on himself, but on others; and society, as the protector of all its members, must retaliate on him; must inflict pain on him for the express purpose of punishment, and must take care that it be sufficiently severe. In the one case, he is an offender at our bar, and we are called on not only to sit in judgment on him, but, in one shape or another, to execute our own sentence: in the other case, it is not our part to inflict any suffering

on him, except what may incidentally follow from our using the same liberty in the regulation of our own affairs, which we allow to him in his.

The distinction here pointed out between the part of a person's life which concerns only himself, and that which concerns others, many persons will refuse to admit. How (it may be asked) can any part of the conduct of a member of society be a matter of indifference to the other members? No person is an entirely isolated being; it is impossible for a person to do anything seriously or permanently hurtful to himself, without mischief reaching at least to his near connections, and often far beyond them. If he injures his property, he does harm to those who directly or indirectly derived support from it, and usually diminishes, by a greater or less amount, the general resources of the community. If he deteriorates his bodily or mental faculties, he not only brings evil upon all who depended on him for any portion of their happiness, but disqualifies himself for rendering the services which he owes to his fellow-creatures generally; perhaps becomes a burden on their affection or benevolence; and if such conduct were very frequent, hardly an offense that is committed would detract more from the general sum of good. Finally, if by his vices or follies a person does no direct harm to others, he is nevertheless (it may be said) injurious by his example; and ought to be compelled to control himself, for the sake of those whom the sight or knowledge of his conduct might corrupt or mislead.

And even (it will be added) if the consequences of misconduct could be confined to the vicious or thoughtless individual, ought society to abandon to their own guidance those who are manifestly unfit for it? If protection against themselves is confessedly due to children and persons under age, is not society equally bound to afford it to persons of mature years who are equally incapable of self-government? If gambling, or drunkenness, or incontinence, or idleness, or uncleanliness, are as injurious to happiness, and as great a hindrance to improvement, as many or most of the acts prohibited by law, why (it may be asked) should not law, so far as is consistent with practicability and social con-

venience, endeavor to repress these also? And as a supplement to the unavoidable imperfections of law, ought not opinion at least to organize a powerful police against these vices, and visit rigidly with social penalties those who are known to practice them? There is no question here (it may be said) about restricting individuality, or impeding the trial of new and original experiments in living. The only things it is sought to prevent are things which have been tried and condemned from the beginning of the world until now; things which experience has shown not to be useful or suitable to any person's individuality. There must be some length of time and amount of experience after which a moral or prudential truth may be regarded as established: and it is merely desired to prevent generation after generation from falling over the same precipice which has been fatal to their predecessors.

I fully admit that the mischief which a person does to himself may seriously affect, both through their sympathies and their interests, those nearly connected with him and, in a minor degree, society at large. When, by conduct of this sort, a person is led to violate a distinct and assignable obligation to any other person or persons, the case is taken out of the self-regarding class, and becomes amenable to moral disapprobation in the proper sense of the term. If, for example, a man, through intemperance or extravagance, becomes unable to pay his debts, or, having undertaken the moral responsibility of a family, becomes from the same cause incapable of supporting or educating them, he is deservedly reprobated, and might be justly punished; but it is for the breach of duty to his family or creditors, not for the extravagance. If the resources which ought to have been devoted to them, had been diverted from them for the most prudent investment, the moral culpability would have been the same. George Barnwell murdered his uncle to get money for his mistress, but if he had done it to set himself up in business, he would equally have been hanged. Again, in the frequent case of a man who causes grief to his family by addiction to bad habits, he deserves reproach for his unkindness or ingratitude; but so he may for cultivating habits

not in themselves vicious, if they are painful to those with whom he passes his life, or who from personal ties are dependent on him for their comfort. Whoever fails in the consideration generally due to the interests and feelings of others, not being compelled by some more imperative duty, or justified by allowable self-preference, is a subject of moral disapprobation for that failure, but not for the cause of it, nor for the errors, merely personal to himself, which may have remotely led to it. In like manner, when a person disables himself, by conduct purely self-regarding, from the performance of some definite duty incumbent on him to the public, he is guilty of a social offense. No person ought to be punished simply for being drunk; but a soldier or a policeman should be punished for being drunk on duty. Whenever, in short, there is a definite damage, or a definite risk of damage, either to an individual or to the public, the case is taken out of the province of liberty, and placed in that of morality or law.

But with regard to the merely contingent, or, as it may be called, constructive injury which a person causes to society, by conduct which neither violates any specific duty to the public, nor occasions perceptible hurt to any assignable individual except himself, the inconvenience is one which society can afford to bear, for the sake of the greater good of human freedom. If grown persons are to be punished for not taking proper care of themselves, I would rather it were for their own sake, than under pretense of preventing them from impairing their capacity of rendering to society benefits which society does not pretend it has a right to exact. But I cannot consent to argue the point as if society had no means of bringing its weaker members up to its ordinary standard of rational conduct, except waiting till they do something irrational, and then punishing them, legally or morally, for it. Society has had absolute power over them during all the early portion of their existence: it has had the whole period of childhood and nonage in which to try whether it could make them capable of rational conduct in life. The existing generation is master both of the training and the entire circumstances of the generation to come; it cannot indeed make

them perfectly wise and good, because it is itself so lamentably deficient in goodness and wisdom; and its best efforts are not always, in individual cases, its most successful ones; but it is perfectly well able to make the rising generation, as a whole, as good as, and a little better than, itself. If society lets any considerable number of its members grow up mere children, incapable of being acted on by rational consideration of distant motives, society has itself to blame for the consequences. Armed not only with all the powers of education, but with the ascendency which the authority of a received opinion always exercises over the minds who are least fitted to judge for themselves; and aided by the *natural* penalties which cannot be prevented from falling on those who incur the distaste or the contempt of those who know them; let not society pretend that it needs, besides all this, the power to issue commands and enforce obedience in the personal concerns of individuals, in which, on all principles of justice and policy, the decision ought to rest with those who are to abide the consequences. Nor is there anything which tends more to discredit and frustrate the better means of influencing conduct than a resort to the worse. If there be among those whom it is attempted to coerce into prudence or temperance any of the material of which vigorous and independent characters are made, they will infallibly rebel against the yoke. No such person will ever feel that others have a right to control him in his concerns, such as they have to prevent him from injuring them in theirs; and it easily comes to be considered a mark of spirit and courage to fly in the face of such usurped authority, and do with ostentation the exact opposite of what it enjoins; as in the fashion of grossness which succeeded, in the time of Charles **II,** to the fanatical moral intolerance of the Puritans. With respect to what is said of the necessity of protecting society from the bad example set to others by the vicious or the self-indulgent, it is true that bad example may have a pernicious effect, especially the example of doing wrong to others with impunity to the wrong-doer. But we are now speaking of conduct which, while it does no wrong to others, is supposed to do great harm to the agent himself: and I do not see how those who believe this

can think otherwise than that the example, on the whole, must be more salutary than hurtful; since, if it displays the misconduct, it displays also the painful or degrading consequences which, if the conduct is justly censured, must be supposed to be in all or most cases attendant on it.

But the strongest of all the arguments against the interference of the public with purely personal conduct is that, when it does interfere, the odds are that it interferes wrongly, and in the wrong place. On questions of social morality, of duty to others, the opinion of the public, that is, of an overruling majority, though often wrong, is likely to be still oftener right; because on such questions they are only required to judge of their own interests; of the manner in which some mode of conduct, if allowed to be practiced, would affect themselves. But the opinion of a similar majority, imposed as a law on the minority, on questions of self-regarding conduct, is quite as likely to be wrong as right; for in these cases public opinion means, at the best, some people's opinion of what is good or bad for other people; while very often it does not even mean that; the public, with the most perfect indifference, passing over the pleasure or convenience of those whose conduct they censure, and considering only their own preference. There are many who consider as an injury to themselves any conduct which they have a distaste for, and resent it as an outrage to their feelings; as a religious bigot, when charged with disregarding the religious feelings of others, has been known to retort that they disregard his feelings, by persisting in their abominable worship or creed. But there is no parity between the feeling of a person for his own opinion, and the feeling of another who is offended at his holding it; no more than between the desire of a thief to take a purse, and the desire of the right owner to keep it. And a person's taste is as much his own peculiar concern as his opinion or his purse. It is easy for anyone to imagine an ideal public which leaves the freedom and choice of individuals in all uncertain matters undisturbed, and only requires them to abstain from modes of conduct which universal experience has condemned. But where has there been seen a public which set any such limit to its censorship? or when does the public trouble itself about

universal experience? In its interferences with personal conduct it is seldom thinking of anything but the enormity of acting or feeling differently from itself; and this standard of judgment, thinly disguised, is held up to mankind as the dictate of religion and philosophy, by nine-tenths of all moralists and speculative writers. These teach that things are right because they are right; because we feel them to be so. They tell us to search in our own minds and hearts for laws of conduct binding on ourselves and on all others. What can the poor public do but apply these instructions, and make their own personal feelings of good and evil, if they are tolerably unanimous in them, obligatory on all the world?

The evil here pointed out is not one which exists only in theory; and it may perhaps be expected that I should specify the instances in which the public of this age and country improperly invests its own preferences with the character of moral laws. I am not writing an essay on the aberrations of existing moral feeling. That is too weighty a subject to be discussed parenthetically, and by way of illustration. Yet examples are necessary to show that the principle I maintain is of serious and practical moment, and that I am not endeavoring to erect a barrier against imaginary evils. And it is not difficult to show, by abundant instances, that to extend the bounds of what may be called moral police, until it encroaches on the most unquestionably legitimate liberty of the individual, is one of the most universal of all human propensities.

As a first instance, consider the antipathies which men cherish on no better grounds than that persons whose religious opinions are different from theirs do not practice their religious observances, especially their religious abstinences. To cite a rather trivial example, nothing in the creed or practice of Christians does more to envenom the hatred of Mohammedans against them than the fact of their eating pork. There are few acts which Christians and Europeans regard with more unaffected disgust than Mussulmans regard this particular mode of satisfying hunger. It is, in the first place, an offense against their religion; but this circumstance by no means explains either the degree or the kind of their repugnance; for wine also is forbidden by their religion, and to partake of

it is by all Mussulmans accounted wrong, but not disgusting. Their aversion to the flesh of the "unclean beast" is, on the contrary, of that peculiar character, resembling an instinctive antipathy, which the idea of uncleanness, when once it thoroughly sinks into the feelings, seems always to excite even in those whose personal habits are anything but scrupulously cleanly, and of which the sentiment of religious impurity, so intense in the Hindoos, is a remarkable example. Suppose now that in a people, of whom the majority were Mussulmans, that majority should insist upon not permitting pork to be eaten within the limits of the country. This would be nothing new in Mohammedan countries.[9] Would it be a legitimate exercise of the moral authority of public opinion? and if not, why not? The practice is really revolting to such a public. They also sincerely think that it is forbidden and abhorred by the Deity. Neither could the prohibition be censured as religious persecution. It might be religious in its origin, but it would not be persecution for religion, since nobody's religion makes it a duty to eat pork. The only tenable ground of condemnation would be that with the personal tastes and self-regarding concerns of individuals the public has no business to interfere.

To come somewhat nearer home: the majority of Spaniards consider it a gross impiety, offensive in the highest degree to the Supreme Being, to worship him in any other manner than the Roman Catholic; and no other public worship is lawful on Spanish soil. The people of all Southern Europe look upon a married clergy as not only irreligious, but unchaste, indecent, gross, disgusting. What do Protestants think of these perfectly sincere feelings, and of the attempt to enforce them against non-Catholics? Yet, if mankind are justified in interfering with each other's liberty in things which do not concern the interests of others, on what principle is it possible consistently to exclude these cases? or who can blame people for desiring to suppress what they regard as a scandal in the sight of God and man? No stronger case can be shown for prohibiting anything which is regarded as a personal immorality, than is made out for suppressing these practices in the eyes of those who regard them as impieties; and unless we

are willing to adopt the logic of persecutors, and to say that we may persecute others because we are right, and that they must not persecute us because they are wrong, we must beware of admitting a principle of which we should resent as a gross injustice the application to ourselves.

The preceding instances may be objected to, although unreasonably, as drawn from contingencies impossible among us: opinion, in this country, not being likely to enforce abstinence from meats, or to interfere with people for worshiping, and for either marrying or not marrying, according to their creed or inclination. The next example, however, shall be taken from an interference with liberty which we have by no means passed all danger of.

Wherever the Puritans have been sufficiently powerful, as in New England, and in Great Britain at the time of the Commonwealth, they have endeavored, with considerable success, to put down all public, and nearly all private amusements: especially music, dancing, public games, or other assemblages for purposes of diversion, and the theater. There are still in this country large bodies of persons by whose notions of morality and religion these recreations are condemned; and those persons belonging chiefly to the middle class, who are the ascendant power in the present social and political condition of the kingdom, it is by no means impossible that persons of these sentiments may at some time or other command a majority in Parliament. How will the remaining portion of the community like to have the amusements that shall be permitted to them regulated by the religious and moral sentiments of the stricter Calvinists and Methodists? Would they not, with considerable peremptoriness, desire these intrusively pious members of society to mind their own business? This is precisely what should be said to every government and every public, who have the pretension that no person shall enjoy any pleasure which they think wrong. But if the principle of the pretension be admitted, no one can reasonably object to its being acted on in the sense of the majority, or other preponderating power in the country; and all persons must be ready to conform to the idea of a Christian commonwealth, as understood by the early settlers

in New England, if a religious profession similar to theirs should ever succeed in regaining its lost ground, as religions supposed to be declining have so often been known to do.

To imagine another contingency, perhaps more likely to be realized than the one last mentioned. There is confessedly a strong tendency in the modern world towards a democratic constitution of society, accompanied or not by popular political institutions. It is affirmed that in the country where this tendency is most completely realized—where both society and the government are most democratic—the United States—the feeling of the majority, to whom any appearance of a more showy or costly style of living than they can hope to rival is disagreeable, operates as a tolerably effectual sumptuary law, and that in many parts of the Union it is really difficult for a person possessing a very large income to find any mode of spending it which will not incur popular disapprobation. Though such statements as these are doubtless much exaggerated as a representation of existing facts, the state of things they describe is not only a conceivable and possible, but a probable result of democratic feeling, combined with the notion that the public has a right to a veto on the manner in which individuals shall spend their incomes. We have only further to suppose a considerable diffusion of Socialist opinions, and it may become infamous in the eyes of the majority to possess more property than some very small amount, or any income not earned by manual labor. Opinions similar in principle to these already prevail widely among the artisan class, and weigh oppressively on those who are amenable to the opinion chiefly of that class, namely, its own members. It is known that the bad workmen who form the majority of the operatives in many branches of industry, are decidedly of opinion that bad workmen ought to receive the same wages as good, and that no one ought to be allowed, through piecework or otherwise, to earn by superior skill or industry more than others can without it. And they employ a moral police, which occasionally becomes a physical one, to deter skillful workmen from receiving, and employers from giving, a larger remuneration for a more useful service. If the public have any jurisdiction over private concerns, I cannot see that these

people are in fault, or that any individual's particular public can be blamed for asserting the same authority over his individual conduct which the general public asserts over people in general.

But, without dwelling upon supposititious cases, there are, in our own day, gross usurpations upon the liberty of private life actually practiced, and still greater ones threatened with some expectation of success, and opinions propounded which assert an nnlimited right in the public not only to prohibit by law everything which it thinks wrong, but, in order to get at what it thinks wrong, to prohibit a number of things which it admits to be innocent.

Under the name of preventing intemperance, the people of one English colony, and of nearly half the United States, have been interdicted by law from making any use whatever of fermented drinks, except for medical purposes: for prohibition of their sale is in fact, as it is intended to be, prohibition of their use. And though the impracticability of executing the law has caused its repeal in several of the States which had adopted it, including the one from which it derives its name, an attempt has notwithstanding been commenced, and is prosecuted with considerable zeal by many of the professed philanthropists, to agitate for a a similar law in this country. The association, or "Alliance" as it terms itself, which has been formed for this purpose, has acquired some notoriety through the publicity given to a correspondence between its secretary and one of the very few English public men who hold that a politician's opinions ought to be founded on principles. Lord Stanley's share in this correspondence is calculated to strengthen the hopes already built on him, by those who know how rare such qualities as are manifested in some of his public appearances unhappily are among those who figure in political life. The organ of the Alliance, who would "deeply deplore the recognition of any principle which could be wrested to justify bigotry and persecution," undertakes to point out the "broad and impassable barrier" which divides such principles from those of the association. "All matters relating to thought, opinion, conscience, appear to me," he says, "to

be without the sphere of legislation; all pertaining to social act, habit, relation, subject only to a discretionary power vested in the State itself, and not in the individual, to be within it." No mention is made of a third class, different from either of these, viz., acts and habits which are not social, but individual; although it is to this class, surely, that the act of drinking fermented liquors belongs. Selling fermented liquors, however, is trading, and trading is a social act. But the infringement complained of is not on the liberty of the seller, but on that of the buyer and consumer; since the State might just as well forbid him to drink wine as purposely make it impossible for him to obtain it. The secretary, however, says, "I claim, as a citizen, a right to legislate whenever my social rights are invaded by the social act of another." And now for the definition of these 'social rights.' "If anything invades my social rights, certainly the traffic in strong drink does. It destroys my primary right of security, by constantly creating and stimulating social disorder. It invades my right of equality, by deriving a profit from the creation of a misery I am taxed to support. It impedes my right to free moral and intellectual development, by surrounding my path with dangers, and by weakening and demoralizing society, from which I have a right to claim mutual aid and intercourse." A theory of 'social rights' the like of which probably never before found its way into distinct language: being nothing short of this—that it is the absolute social right of every individual, that every other individual shall act in every respect exactly as he ought; that whosoever fails thereof in the smallest particular violates my social right, and entitles me to demand from the legislature the removal of the grievance. So monstrous a principle is far more dangerous than any single interference with liberty; there is no violation of liberty which it would not justify; it acknowledges no right to any freedom whatever, except perhaps to that of holding opinions in secret, without ever disclosing them: for, the moment an opinion which I consider noxious passes anyone's lips, it invades all the 'social rights' attributed to me by the Alliance. The doctrine ascribes to all mankind a vested interest in each other's

moral, intellectual, and even physical perfection, to be defined by each claimant according to his own standard.

Another important example of illegitimate interference with the rightful liberty of the individual, not simply threatened, but long since carried into triumphant effect, is Sabbatarian legislation. Without doubt, abstinence on one day in the week, so far as the exigencies of life permit, from the usual daily occupation, though in no respect religiously binding on any except Jews, is a highly beneficial custom. And inasmuch as this custom cannot be observed without a general consent to that effect among the industrious classes, therefore, in so far as some persons by working may impose the same necessity on others, it may be allowable and right that the law should guarantee to each the observance by others of the custom, by suspending the greater operations of industry on a particular day. But this justification, grounded on the direct interest which others have in each individual's observance of the practice, does not apply to the self-chosen occupations in which a person may think fit to employ his leisure; nor does it hold good, in the smallest degree, for legal restrictions on amusements. It is true that the amusement of some is the day's work of others; but the pleasure, not to say the useful recreation, of many, is worth the labor of a few, provided the occupation is freely chosen, and can be freely resigned. The operatives are perfectly right in thinking that if all worked on Sunday, seven days' work would have to be given for six days' wages; but so long as the great mass of employments are suspended, the small number who for the enjoyment of others must still work, obtain a proportional increase of earnings; and they are not obliged to follow those occupations if they prefer leisure to emolument. If a further remedy is sought, it might be found in the establishment by custom of a holiday on some other day of the week for those particular classes of persons. The only ground, therefore, on which restrictions on Sunday amusements can be defended, must be that they are religiously wrong; a motive of legislation which can never be too earnestly protested against. "*Deorum injuriae Diis curae.*" It remains to be proved that society or any of

its officers holds a commission from on high to avenge any supposed offense to Omnipotence, which is not also a wrong to our fellow-creatures. The notion that it is one man's duty that another should be religious, was the foundation of all the religious persecutions ever perpetrated, and, if admitted, would fully justify them. Though the feeling which breaks out in the repeated attempts to stop railways traveling on Sunday, in the resistance to the opening of museums, and the like, has not the cruelty of the old persecutors, the state of mind indicated by it is fundamentally the same. It is a determination not to tolerate others in doing what is permitted by their religion, because it is not permitted by the persecutor's religion. It is a belief that God not only abominates the act of the misbeliever, but will not hold us guiltless if we leave him unmolested.

I cannot refrain from adding to these examples of the little account commonly made of human liberty, the language of downright persecution which breaks out from the press of this country whenever it feels called on to notice the remarkable phenomenon of Mormonism. Much might be said on the unexpected and instructive fact that an alleged new revelation, and a religion founded on it, the product of palpable imposture, not even supported by the *prestige* of extraordinary qualities in its founder, is believed by hundreds of thousands, and has been made the foundation of a society, in the age of newspapers, railways, and the electric telegraph. What here concerns us is, that this religion, like other and better religions, has its martyrs: that its propbet and founder was, for his teaching, put to death by a mob; that others of its adherents lost their lives by the same lawless violence; that they were forcibly expelled, in a body, from the country in which they first grew up; while, now that they have been chased into a solitary recess in the midst of a desert, many in this country openly declare that it would be right (only that it is not convenient) to send an expedition against them, and compel them by force to conform to the opinions of other people. The article of the Mormonite doctrine which is the chief provocative to the antipathy which thus breaks through the ordinary restraints of religious

tolerance, is its sanction of polygamy; which, though permitted to Mohammedans, and Hindoos, and Chinese, seems to excite unquenchable animosity when practiced by persons who speak English and profess to be a kind of Christians. No one has a deeper disapprobation than I have of this Mormon institution; both for other reasons, and because, far from being in any way countenanced by the principle of liberty, it is a direct infraction of that principle, being a mere riveting of the chains of one half of the community, and an emancipation of the other from reciprocity of obligation towards them. Still, it must be remembered that this relation is as much voluntary on the part of the women concerned in it, and who may be deemed the sufferers by it, as is the case with any other form of the marriage institution; and however surprising this fact may appear, it has its explanation in the common ideas and customs of the world, which teaching women to think marriage the one thing needful, make it intelligible that many a woman should prefer being one of several wives, to not being a wife at all. Other countries are not asked to recognize such unions, or release any portion of their inhabitants from their own laws on the score of Mormonite opinions. But when the dissentients have conceded to the hostile sentiments of others far more than could justly be demanded; when they have left the countries to which their doctrines were unacceptable, and established themselves in a remote corner of the earth, which they have been the first to render habitable to human beings; it is difficult to see on what principles but those of tyranny they can be prevented from living there under what laws they please, provided they commit no aggression on other nations, and allow perfect freedom of departure to those who are dissatisfied with their ways. A recent writer, in some respects of considerable merit, proposes (to use his own words) not a crusade, but a *civilisade*, against this polygamous community, to put an end to what seems to him a retrograde step in civilization. It also appears so to me, but I am not aware that any community has a right to force another to be civilized. So long as the sufferers by the bad law do not invoke assistance from other communities, I cannot admit

that persons entirely unconnected with them ought to step in and require that a condition of things with which all who are directly interested appear to be satisfied, should be put an end to because it is a scandal to persons some thousands of miles distant, who have no part or concern in it. Let them send missionaries, if they please, to preach against it; and let them, by any fair means (of which silencing the teachers is not one), oppose the progress of similar doctrines among their own people. If civilization has got the better of barbarism when barbarism had the world to itself, it is too much to profess to be afraid lest barbarism, after having been fairly got under, should revive and conquer civilization. A civilization that can thus succumb to its vanquished enemy, must first have become so degenerate, that neither its appointed priests and teachers, nor anybody else, has the capacity, or will take the trouble, to stand up for it. If this be so, the sooner such a civilization receives notice to quit the better. It can only go on from bad to worse, until destroyed and regenerated (like the Western Empire) by energetic barbarians.

CHAPTER V

APPLICATIONS

The principles asserted in these pages must be more generally admitted as the basis for discussion of details, before a consistent application of them to all the various departments of government and morals can be attempted with any prospect of advantage. The few observations I propose to make on questions of detail are designed to illustrate the principles, rather than to follow them out to the consequences. I offer, not so much applications, as specimens of application; which may serve to bring into greater clearness the meaning and limits of the two maxims which together form the entire doctrine of this essay, and to assist the judgment in holding the balance between them, in the cases where it appears doubtful which of them is applicable to the case.

The maxims are, first, that the individual is not accountable to society for his actions, in so far as these concern the interests of no person but himself. Advice, instruction, persuasion, and avoidance by other people if thought necessary by them for their own good, are the only measures by which society can justifiably express its dislike or disapprobation of his conduct. Secondly, that for such actions as are prejudicial to the interests of others, the individual is accountable, and may be subjected either to social or to legal punishment, if society is of opinion that the one or the other is requisite for its protection.

In the first place, it must by no means be supposed, because damage, or probability of damage, to the interests of others, can alone justify the interference of society, that therefore

it always does justify such interference. In many cases, an individual, in pursuing a legitimate object, necessarily and therefore legitimately causes pain or loss to others, or intercepts a good which they have a reasonable hope of obtaining. Such oppositions of interest between individuals often arise from bad social institutions, but are unavoidable while those institutions last; and some would be unavoidable under any institutions. Whoever succeeds in an overcrowded profession, or in a competitive examination; whoever is preferred to another in any contest for an object which both desire, reaps benefit from the loss of others, from their wasted exertion and their disappointment. But it is, by common admission, better for the general interest of mankind, that persons should pursue their objects undeterred by this sort of consequences. In other words, society admits no right, either legal or moral, in the disappointed competitors to immunity from this kind of suffering; and feels called on to interfere, only when means of success have been employed which it is contrary to the general interest to permit —namely, fraud or treachery, and force.

Again, trade is a social act. Whoever undertakes to sell any description of goods to the public, does what affects the interest of other persons, and of society in general; and thus his conduct, in principle, comes within the jurisdiction of society: accordingly, it was once held to be the duty of governments, in all cases which were considered of importance, to fix prices, and regulate the processes of manufacture. But it is now recognized, though not till after a long struggle, that both the cheapness and the good quality of commodities are most effectually provided for by leaving the producers and sellers perfectly free, under the sole check of equal freedom to the buyers for supplying themselves elsewhere. This is the so-called doctrine of Free Trade, which rests on grounds different from, though equally solid with, the principle of individual liberty asserted in this essay. Restrictions on trade, or on production for purposes of trade, are indeed restraints; and all restraint, *qua* restraint, is an evil: but the restraints in question affect only that part of conduct which society is competent to restrain, and are

wrong solely because they do not really produce the results which it is desired to produce by them. As the principle of individual liberty is not involved in the doctrine of Free Trade, so neither is it in most of the questions which arise respecting the limits of that doctrine; as, for example, what amount of public control is admissible for the prevention of fraud by adulteration; how far sanitary precautions or arrangements to protect work people employed in dangerous occupations, should be enforced on employers. Such questions involve considerations of liberty only in so far as leaving people to themselves is always better, *ceteris paribus*, than controlling them; but that they may be legitimately controlled for these ends is in principle undeniable. On the other hand, there are questions relating to interference with trade which are essentially questions of liberty: such as the Maine Law, already touched upon; the prohibition of the importation of opium into China; the restriction of the sale of poisons; all cases, in short, where the object of the interference is to make it impossible or difficult to obtain a particular commodity. These interferences are objectionable, not as infringements on the liberty of the producer or seller, but on that of the buyer.

One of these examples, that of the sale of poisons, opens a new question; the proper limits of what may be called the functions of police; how far liberty may legitimately be invaded for the prevention of crime, or of accident. It is one of the undisputed functions of government to take precautions against crime before it has been committed, as well as to detect and punish it afterwards. The preventive function of government, however, is far more liable to be abused, to the prejudice of liberty, than the punitory function; for there is hardly any part of the legitimate freedom of action of a human being which would not admit of being represented, and fairly too, as increasing the facilities for some form or other of delinquency. Nevertheless, if a public authority, or even a private person, sees anyone evidently preparing to commit a crime, they are not bound to look on inactive until the crime is committed, but may interfere to prevent it. If poisons were never bought or used for any

purpose except the commission of murder it would be right to prohibit their manufacture and sale. They may, however, be wanted not only for innocent but for useful purposes, and restrictions cannot be imposed in the one case without operating in the other. Again, it is a proper office of public authority to guard against accidents. If either a public officer or anyone else saw a person attempting to cross a bridge which had been ascertained to be unsafe, and there were no time to warn him of his danger, they might seize him and turn him back, without any real infringement of his liberty; for liberty consists in doing what one desires, and he does not desire to fall into the river. Nevertheless, when there is not a certainty, but only a danger of mischief, no one but the person himself can judge of the sufficiency of the motive which may prompt him to incur the risk: in this case, therefore (unless he is a child, or delirious, or in some state of excitement or absorption incompatible with the full use of the reflecting faculty), he ought, I conceive, to be only warned of the danger; not forcibly prevented from exposing himself to it. Similar considerations, applied to such a question as the sale of poisons, may enable us to decide which among the possible modes of regulation are or are not contrary to principle. Such a precaution, for example, as that of labeling the drug with some word expressive of its dangerous character, may be enforced without violation of liberty: the buyer cannot wish not to know that the thing he possesses has poisonous qualities. But to require in all cases the certificate of a medical practitioner would make it sometimes impossible, always expensive, to obtain the article for legitimate uses. The only mode apparent to me, in which difficulties may be thrown in the way of crime committed through this means, without any infringement worth taking into account upon the liberty of those who desire the poisonous substance for other purposes, consists in providing what, in the apt language of Bentham, is called "preappointed evidence." This provision is familiar to everyone in the case of contracts. It is usual and right that the law, when a contract is entered into, should require as the condition of its enforcing performance, that certain formalities should be

observed, such as signatures, attestation of witnesses, and the like, in order that in case of subsequent dispute there may be evidence to prove that the contract was really entered into, and that there was nothing in the circumstances to render it legally invalid: the effect being to throw great obstacles in the way of fictitious contracts, or contracts made in circumstances which, if known, would destroy their validity. Precautions of a similar nature might be enforced in the sale of articles adapted to be instruments of crime. The seller, for example, might be required to enter in a register the exact time of the transaction, the name and address of the buyer, the precise quality and quantity sold; to ask the purpose for which it was wanted, and record the answer he received. When there was no medical prescription, the presence of some third person might be required, to bring home the fact to the purchaser, in case there should afterwards be reason to believe that the article had been applied to criminal purposes. Such regulations would in general be no material impediment to obtaining the article, but a very considerable one to making an improper use of it without detection.

The right inherent in society to ward off crimes against itself by antecedent precautions, suggests the obvious limitations to the maxim, that purely self-regarding misconduct cannot properly be meddled with in the way of prevention or punishment. Drunkenness, for example, in ordinary cases, is not a fit subject for legislative interference; but I should deem it perfectly legitimate that a person who had once been convicted of any act of violence to others under the influence of drink, should be placed under a special legal restriction, personal to himself; that if he were afterwards found drunk, he should be liable to a penalty, and that if when in that state he committed another offense, the punishment to which he would be liable for that other offense should be increased in severity. The making himself drunk, in a person whom drunkenness excites to do harm to others, is a crime against others. So again, idleness, except in a person receiving support from the public, or except when it constitutes a breach of contract, cannot without tyranny be made a subject

of legal punishment; but if, either from idleness or from any other avoidable cause, a man fails to perform his legal duties to others, as for instance to support his children, it is no tyranny to force him to fulfill that obligation, by compulsory labor, if no other means are available.

Again, there are many acts which, being directly injurious only to the agents themselves, ought not to be legally interdicted, but which, if done publicly, are a violation of good manners, and coming thus within the category of offenses against others, may rightly be prohibited. Of this kind are offenses against decency; on which it is unnecessary to dwell, the rather as they are only connected indirectly with our subject, the objection to publicity being equally strong in the case of many actions not in themselves condemnable, nor supposed to be so.

There is another question to which an answer must be found, consistent with the principles which have been laid down. In cases of personal conduct supposed to be blamable, but which respect for liberty precludes society from preventing or punishing, because the evil directly resulting falls wholly on the agent; what the agent is free to do, ought other persons to be equally free to counsel or instigate? This question is not free from difficulty. The case of a person who solicits another to do an act is not strictly a case of self-regarding conduct. To give advice or offer inducements to anyone is a social act, and may, therefore, like actions in general which affect others, be supposed amenable to social control. But a little reflection corrects the first impression, by showing that if the case is not strictly within the definition of individual liberty, yet the reasons on which the principle of individual liberty is grounded are applicable to it. If people must be allowed, in whatever concerns only themselves, to act as seems best to themselves, at their own peril, they must equally be free to consult with one another about what is fit to be so done; to exchange opinions, and give and receive suggestions. Whatever it is permitted to do, it must be permitted to advise to do. The question is doubtful only when the instigator derives a personal benefit from his advice; when he makes it his occupation, for sub-

sistence or pecuniary gain, to promote what society and the State consider to be an evil. Then, indeed, a new element of complication is introduced; namely, the existence of classes of persons with an interest opposed to what is considered as the public weal, and whose mode of living is grounded on the counteraction of it. Ought this to be interfered with, or not? Fornication, for example, must be tolerated, and so must gambling; but should a person be free to be a pimp, or to keep a gambling-house? The case is one of those which lie on the exact boundary line between two principles, and it is not at once apparent to which of the two it properly belongs. There are arguments on both sides. On the side of toleration it may be said that the fact of following anything as an occupation, and living or profiting by the practice of it, cannot make that criminal which would otherwise be admissible; that the act should either be consistently permitted or consistently prohibited; that if the principles which we have hitherto defended are true, society has no business, *as* society, to decide anything to be wrong which concerns only the individual; that it cannot go beyond dissuasion, and that one person should be as free to persuade as another to dissuade. In opposition to this it may be contended, that although the public, or the State, are not warranted in authoritatively deciding, for purposes of repression or punishment, that such or such conduct affecting only the interests of the individual is good or bad, they are fully justified in assuming, if they regard it as bad, that its being so or not is at least a disputable question: that, this being supposed, they cannot be acting wrongly in endeavoring to exclude the influence of solicitations which are not disinterested, of instigators who cannot possibly be impartial —who have a direct personal interest on one side, and that side the one which the State believes to be wrong, and who confessedly promote it for personal objects only. There can surely, it may be urged, be nothing lost, no sacrifice of good, by so ordering matters that persons shall make their election, either wisely or foolishly, on their own prompting, as free as possible from the arts of persons who stimulate their inclinations for interested purposes of their own.

Thus (it may be said) though the statutes respecting unlawful games are utterly indefensible—though all persons should be free to gamble in their own or each other's houses, or in any place of meeting established by their own subscriptions, and open only to the members and their visitors—yet public gambling-houses should not be permitted. It is true that the prohibition is never effectual, and that, whatever amount of tyrannical power may be given to the police, gambling-houses can always be maintained under other pretenses; but they may be compelled to conduct their operations with a certain degree of secrecy and mystery, so that nobody knows anything about them but those who seek them; and more than this society ought not to aim at. There is considerable force in these arguments. I will not venture to decide whether they are sufficient to justify the moral anomaly of punishing the accessory, when the principal is (and must be) allowed to go free; of fining or imprisoning the procurer, but not the fornicator—the gambling-house keeper, but not the gambler. Still less ought the common operations of buying and selling to be interfered with on analogous grounds. Almost every article which is bought and sold may be used in excess, and the sellers have a pecuniary interest in encouraging that excess; but no argument can be founded on this, in favor, for instance, of the Maine Law; because the class of dealers in strong drinks, though interested in their abuse, are indispensably required for the sake of their legitimate use. The interest, however, of these dealers in promoting intemperance is a real evil, and justifies the State in imposing restrictions and requiring guarantees which, but for that justification, would be infringements of legitimate liberty.

A further question is, whether the State, while it permits, should nevertheless indirectly discourage conduct which it deems contrary to the best interests of the agent; whether, for example, it should take measures to render the means of drunkenness more costly, or add to the difficulty of procuring them by limiting the number of the places of sale. On this as on most other practical questions, many distinctions require to be made. To tax stimulants for the

sole purpose of making them more difficult to be obtained, is a measure differing only in degree from their entire prohibition; and would be justifiable only if that were justifiable. Every increase of cost is a prohibition, to those whose means do not come up to the augmented price; and to those who do, it is a penalty laid on them for gratifying a particular taste. Their choice of pleasures, and their mode of expending their income, after satisfying their legal and moral obligations to the State and to individuals, are their own concern, and must rest with their own judgment. These considerations may seem at first sight to condemn the selection of stimulants as special subjects of taxation for purposes of revenue. But it must be remembered that taxation for fiscal purposes is absolutely inevitable; that in most countries it is necessary that a considerable part of that taxation should be indirect; that the State, therefore, cannot help imposing penalties, which to some persons may be prohibitory, on the use of some articles of consumption. It is hence the duty of the State to consider, in the imposition of taxes, what commodities the consumers can best spare; and *a fortiori*, to select in preference those of which it deems the use, beyond a very moderate quantity, to be positively injurious. Taxation, therefore, of stimulants, up to the point which produces the largest amount of revenue (supposing that the State needs all the revenue which it yields) is not only admissible, but to be approved of.

The question of making the sale of these commodities a more or less exclusive privilege, must be answered differently, according to the purposes to which the restriction is intended to be subservient. All places of public resort require the restraint of a police, and places of this kind peculiarly, because offenses against society are especially apt to originate there. It is, therefore, fit to confine the power of selling these commodities (at least for consumption on the spot) to persons of known or vouched-for respectability of conduct; to make such regulations respecting hours of opening and closing as may be requisite for public surveillance, and to withdraw the license if breaches of the peace repeatedly take place through the connivance or incapacity of

the keeper of the house, or if it becomes a rendezvous for concocting and preparing offenses against the law. Any further restriction I do not conceive to be, in principle, justifiable. The limitation in number, for instance, of beer and spirit houses, for the express purpose of rendering them more difficult of access, and diminishing the occasions of temptation, not only exposes all to an inconvenience because there are some by whom the facility would be abused, but is suited only to a state of society in which the laboring classes are avowedly treated as children or savages, and placed under an education of restraint, to fit them for future admission to the privileges of freedom. This is not the principle on which the laboring classes are professedly governed in any free country; and no person who sets due value on freedom will give his adhesion to their being so governed, unless after all efforts have been exhausted to educate them for freedom and govern them as freemen, and it has been definitively proved that they can only be governed as children. The bare statement of the alternative shows the absurdity of supposing that such efforts have been made in any case which needs be considered here. It is only because the institutions of this country are a mass of inconsistencies, that things find admittance into our practice which belong to the system of despotic, or what is called paternal, government, while the general freedom of our institutions precludes the exercise of the amount of control necessary to render the restraint of any real efficacy as a moral education.

It was pointed out in an early part of this essay, that the liberty of the individual, in things wherein the individual is alone concerned, implies a corresponding liberty in any number of individuals to regulate by mutual agreement such things as regard them jointly, and regard no persons but themselves. This question presents no difficulty, so long as the will of all the persons implicated remains unaltered; but since that will may change, it is often necessary, even in things in which they alone are concerned, that they should enter into engagements with one another; and when they do, it is fit, as a general rule, that those engagements should be

kept. Yet, in the laws, probably, of every country, this general rule has some exceptions. Not only persons are not held to engagements which violate the rights of third parties, but it is sometimes considered a sufficient reason for releasing them from an engagement, that it is injurious to themselves. In this and most other civilized countries, for example, an engagement by which a person should sell himself, or allow himself to be sold, as a slave, would be null and void; neither enforced by law nor by opinion. The ground for thus limiting his power of voluntarily disposing of his own lot in life, is apparent, and is very clearly seen in this extreme case. The reason for not interfering, unless for the sake of others, with a person's voluntary acts, is consideration for his liberty. His voluntary choice is evidence that what he so chooses is desirable, or at least endnrable, to him, and his good is on the whole best provided for by allowing him to take his own means of pursuing it. But by selling himself for a slave, he abdicates his liberty; he foregoes any future use of it beyond that single act. He therefore defeats, in his own case, the very purpose which is the justification of allowing him to dispose of himself. He is no longer free; but is thenceforth in a position which has no longer the presumption in its favor, that would be afforded by his voluntarily remaining in it. The principle of freedom cannot require that he should be free not to be free. It is not freedom to be allowed to alienate his freedom. These reasons, the force of which is so conspicuous in this peculiar case, are evidently of far wider application; yet a limit is everywhere set to them by the necessities of life, which continually require, not indeed that we should resign our freedom, but that we should consent to this and the other limitation of it. The principle, however, which demands uncontrolled freedom of action in all that concerns only the agents themselves, requires that those who have become bound to one another, in things which concern no third party, should be able to release one another from the engagement: and even without such voluntary release there are perhaps no contracts or engagements, except those that relate to money or money's worth, of which one can venture to say that there ought

to be no liberty whatever of retraction. Baron Wilhelm von Humboldt, in the excellent essay from which I have already quoted, states it as his conviction, that engagements which involve personal relations or services should never be legally binding beyond a limited duration of time; and that the most important of these engagements, marriage, having the peculiarity that its objects are frustrated unless the feelings of both the parties are in harmony with it, should require nothing more than the declared will of either party to dissolve it. This subject is too important, and too complicated, to be discussed in a parenthesis, and I touch on it only so far as is necessary for purposes of illustration. If the conciseness and generality of Baron Humboldt's dissertation had not obliged him in this instance to content himself with enunciating his conclusion without discussing the premises, he would doubtless have recognized that the question cannot be decided on grounds so simple as those to which he confines himself. When a person, either by express promise or by conduct, has encouraged another to rely upon his continuing to act in a certain way—to build expectations and calculations, and stake any part of his plan of life upon that supposition—a new series of moral obligations arises on his part towards that person, which may possibly be overruled, but cannot be ignored. And again, if the relation between two contracting parties has been followed by consequences to others; if it has placed third parties in any peculiar position, or, as in the case of marriage, has even called third parties into existence, obligations arise on the part of both the contracting parties towards those third persons, the fulfillment of which, or at all events the mode of fulfillment, must be greatly affected by the continuance or disruption of the relation between the original parties to the contract. It does not follow, nor can I admit, that these obligations extend to requiring the fulfillment of the contract at all costs to the happiness of the reluctant party; but they are a necessary element in the question; and even if, as Von Humboldt maintains, they ought to make no difference in the *legal* freedom of the parties to release themselves from the engagement (and I also hold that they ought not

to make *much* difference), they necessarily make a great difference in the *moral* freedom. A person is bound to take all these circumstances into account before resolving on a step which may affect such important interests of others; and if he does not allow proper weight to those interests, he is morally responsible for the wrong. I have made these obvious remarks for the better illustration of the general principle of liberty, and not because they are at all needed on the particular question, which, on the contrary, is usually discussed as if the interest of children was everything, and that of grown persons nothing.

I have already observed that, owing to the absence of any recognized general principles, liberty is often granted where it should be withheld, as well as withheld where it should be granted; and one of the cases in which, in the modern European world, the sentiment of liberty is the strongest, is a case where, in my view, it is altogether misplaced. A person should be free to do as he likes in his own concerns; but he ought not to be free to do as he likes in acting for another, under the pretext that the affairs of the other are his own affairs. The State, while it respects the liberty of each in what specially regards himself, is bound to maintain a vigilant control over his exercise of any power which it allows him to possess over others. This obligation is almost entirely disregarded in the case of the family relations, a case, in its direct influence on human happiness, more important than all others taken together. The almost despotic power of husbands over wives need not be enlarged upon here, because nothing more is needed for the complete removal of the evil than that wives should have the same rights, and should receive the protection of law in the same manner, as all other persons; and because, on this subject, the defenders of established injustice do not avail themselves of the plea of liberty, but stand forth openly as the champions of power. It is in the case of children that misapplied notions of liberty are a real obstacle to the fulfillment by the State of its duties. One would almost think that a man's children were supposed to be literally, and not metaphorically, a part of himself, so jealous is opinion of the smallest

interference of law with his absolute and exclusive control over them; more jealous than of almost any interference with his own freedom of action: so much less do the generality of mankind value liberty than power. Consider, for example, the case of education. Is it not almost a self-evident axiom, that the State should require and compel the education, up to a certain standard, of every human being who is born its citizen? Yet who is there that is not afraid to recognize and assert this truth? Hardly anyone indeed will deny that it is one of the most sacred duties of the parents (or, as law and usage now stand, the father), after summoning a human being into the world, to give to that being an education fitting him to perform his part well in life towards others and towards himself. But while this is unanimously declared to be the father's duty, scarcely anybody, in this country, will bear to hear of obliging him to perform it. Instead of his being required to make any exertion or sacrifice for securing education to his child, it is left to his choice to accept it or not when it is provided gratis! It still remains unrecognized, that to bring a child into existence without a fair prospect of being able, not only to provide food for its body, but instruction and training for its mind, is a moral crime, both against the unfortunate offspring and against society; and that if the parent does not fulfil this obligation, the State ought to see it fulfilled, at the charge, as far as possible, of the parent.

Were the duty of enforcing universal education once admitted there would be an end to the difficulties about what the State should teach, and how it should teach, which now convert the subject into a mere battlefield for sects and parties, causing the time and labor which should have been spent in educating to be wasted in quarreling about education. If the government would make up its mind to require for every child a good education, it might save itself the trouble of providing one. It might leave to parents to obtain the education where and how they pleased, and content itself with helping to pay the school fees of the poorer classes of children, and defraying the entire school expenses of those who have no one else to

pay for them. The objections which are urged with reason against State education do not apply to the enforcement of education by the State, but to the State's taking upon itself to direct that education; which is a totally different thing. That the whole or any large part of the education of the people should be in State hands, I go as far as anyone in deprecating. All that has been said of the importance of individuality of character, and diversity in opinions and modes of conduct, involves, as of the same unspeakable importance, diversity of education. A general State education is a mere contrivance for molding people to be exactly like one another: and as the mold in which it casts them is that which pleases the predominant power in the government, whether this be a monarch, a priesthood, an aristocracy, or the majority of the existing generation; in proportion as it is efficient and successful, it establishes a despotism over the mind, leading by natural tendency to one over the body. An education established and controlled by the State should only exist, if it exist at all, as one among many competing experiments, carried on for the purpose of example and stimulus, to keep the others up to a certain standard of excellence. Unless, indeed, when society in general is in so backward a state that it could not or would not provide for itself any proper institutions of education unless the government undertook the task: then, indeed, the government may, as the less of two great evils, take upon itself the business of schools and universities, as it may that of joint stock companies, when private enterprise, in a shape fitted for undertaking great works of industry, does not exist in the country. But in general, if the country contains a sufficient number of persons qualified to provide education under government auspices, the same persons would be able and willing to give an equally good education on the voluntary principle, under the assurance of remuneration afforded by a law rendering education compulsory, combined with State aid to those unable to defray the expense.

The instrument for enforcing the law could be no other than public examinations, extending to all children, and beginning at an early age. An age might be fixed at which

every child must be examined, to ascertain if he (or she) is able to read. If a child proves unable, the father, unless he has some sufficient ground of excuse, might be subjected to a moderate fine, to be worked out, if necessary, by his labor, and the child might be put to school at his expense. Once in every year the examination should be renewed, with a gradually extending range of subjects, so as to make the universal acquisition, and what is more, retention, of a certain minimum of general knowledge virtually compulsory. Beyond that minimum there should be voluntary examinations on all subjects, at which all who come up to a certain standard of proficiency might claim a certificate. To prevent the State from exercising, through these arrangements, an improper influence over opinion, the knowledge required for passing an examination (beyond the merely instrumental parts of knowledge, such as languages and their use) should, even in the higher classes of examinations, be confined to facts and positive science exclusively. The examinations on religion, politics, or other disputed topics, should not turn on the truth or falsehood of opinions, but on the matter of fact that such and such an opinion is held, on such grounds, by such authors, or schools, or churches. Under this system, the rising generation would be no worse off in regard to all disputed truths than they are at present; they would be brought up either churchmen or dissenters as they now are, the State merely taking care that they should be instructed churchmen, or instructed dissenters. There would be nothing to hinder them from being taught religion, if their parents chose, at the same schools where they were taught other things. All attempts by the State to bias the conclusions of its citizens on disputed subjects are evil; but it may very properly offer to ascertain and certify that a person possesses the knowledge requisite to make his conclusions, on any given subject, worth attending to. A student of philosophy would be the better for being able to stand an examination both in Locke and in Kant, whichever of the two he takes up with, or even if with neither: and there is no reasonable objection to examining an atheist in the evidences of Christianity, provided he is not required

to profess a belief in them. The examinations, however, in the higher branches of knowledge should, I conceive, be entirely voluntary. It would be giving too dangerous a power to governments were they allowed to exclude anyone from professions, even from the profession of teacher, for alleged deficiency of qualifications: and I think, with Wilhelm von Humboldt, that degrees, or other public certificates of scientific or professional acquirements, should be given to all who present themselves for examination, and stand the test; but that such certificates should confer no advantage over competitors other than the weight which may be attached to their testimony by public opinion.

It is not in the matter of education only that misplaced notions of liberty prevent moral obligations on the part of parents from being recognized, and legal obligations from being imposed, where there are the strongest grounds for the former always, and in many cases for the latter also. The fact itself, of causing the existence of a human being, is one of the most responsible actions in the range of human life. To undertake this responsibility—to bestow a life which may be either a curse or a blessing—unless the being on whom it is to be bestowed will have at least the ordinary chances of a desirable existence, is a crime against that being. And in a country either over-peopled, or threatened with being so, to produce children, beyond a very small number, with the effect of reducing the reward of labor by their competition, is a serious offense against all who live by the remuneration of their labor. The laws which, in many countries on the Continent, forbid marriage unless the parties can show that they have the means of supporting a family, do not exceed the legitimate powers of the State: and whether such laws be expedient or not (a question mainly dependent on local circumstances and feelings), they are not objectionable as violations of liberty. Such laws are interferences of the State to prohibit a mischievous act—an act injurious to others, which ought to be a subject of reprobation, and social stigma, even when it is not deemed expedient to superadd legal punishment. Yet the current ideas of liberty, which bend so easily to real infringements of the freedom

of the individual in things which concern only himself, would repel the attempt to put any restraint upon his inclinations when the consequence of their indulgence is a life or lives of wretchedness and depravity to the offspring, with manifold evils to those sufficiently within reach to be in any way affected by their actions. When we compare the strange respect of mankind for liberty, with their strange want of respect for it, we might imagine that a man had an indispensable right to do harm to others, and no right at all to please himself without giving pain to anyone.

I have reserved for the last place a large class of questions respecting the limits of government interference, which, though closely connected with the subject of this essay, do not, in strictness, belong to it. These are cases in which the reasons against interference do not turn upon the principle of liberty: the question is not about restraining the actions of individuals, but about helping them; it is asked whether the government should do, or cause to be done, something for their benefit, instead of leaving it to be done by themselves, individually or in voluntary combination.

The objections to government interference, when it is not such as to involve infringement of liberty, may be of three kinds.

The first is, when the thing to be done is likely to be better done by individuals than by the government. Speaking generally, there is no one so fit to conduct any business, or to determine how or by whom it shall be conducted, as those who are personally interested in it. This principle condemns the interferences, once so common, of the legislature, or the officers of government, with the ordinary processes of industry. But this part of the subject has been sufficiently enlarged upon by political economists, and is not particularly related to the principles of this essay.

The second objection is more nearly allied to our subject. In many cases, though individuals may not do the particular thing so well, on the average, as the officers of government, it is nevertheless desirable that it should be done by them rather than by the government, as a means to their own

mental education—a mode of strengthening their active faculties, exercising their judgment, and giving them a familiar knowledge of the subjects with which they are thus left to deal. This is a principal, though not the sole, recommendation of jury trial (in cases not political); of free and popular local and municipal institutions; of the conduct of industrial and philanthropic enterprises by voluntary associations. These are not questions of liberty, and are connected with that subject only by remote tendencies; but they are questions of development. It belongs to a different occasion from the present to dwell on these things as parts of national education; as being, in truth, the peculiar training of a citizen, the practical part of the political education of a free people, taking them out of the narrow circle of personal and family selfishness, and accustoming them to the comprehension of joint interests, the management of joint concerns—habituating them to act from public or semi-public motives, and guide their conduct by aims which unite instead of isolating them from one another. Without these habits and powers, a free constitution can neither be worked nor preserved; as is exemplified by the too often transitory nature of political freedom in countries where it does not rest upon a sufficient basis of local liberties. The management of purely local business by the localities, and of the great enterprises of industry by the union of those who voluntarily supply the pecuniary means, is further recommended by all the advantages which have been set forth in this essay as belonging to individuality of development, and diversity of modes of action. Government operations tend to be everywhere alike. With individuals and voluntary associations, on the contrary, there are varied experiments, and endless diversity of experience. What the State can usefully do is to make itself a central depository, and active circulator and diffuser, of the experience resulting from many trials. Its business is to enable each experimentalist to benefit by the experiments of others, instead of tolerating no experiments but its own.

The third and most cogent reason for restricting the interference of government is the great evil of adding unnecessarily to its power. Every function superadded to those

already exercised by the government causes its influence over hopes and fears to be more widely diffused, and converts, more and more, the active and ambitious part of the public into hangers-on of the government, or of some party which aims at becoming the government. If the roads, the railways, the banks, the insurance offices, the great joint-stock companies, the universities, and the public charities, were all of them branches of the government; if, in addition, the municipal corporations and local boards, with all that now devolves on them, became departments of the central administration; if the employees of all these different enterprises were appointed and paid by the government, and looked to the government for every rise in life; not all the freedom of the press and popular constitution of the legislature would make this or any other country free otherwise than in name. And the evil would be greater, the more efficiently and scientifically the administrative machinery was constructed—the more skillful the arrangements for obtaining the best qualified hands and heads with which to work it. In England it has of late been proposed that all the members of the civil service of government should be selected by competitive examination, to obtain for these employments the most intelligent and instructed persons procurable; and much has been said and written for and against this proposal. One of the arguments most insisted on by its opponents is that the occupation of a permanent official servant of the State does not hold out sufficient prospects of emolument and importance to attract the highest talents, which will always be able to find a more inviting career in the professions, or in the service of companies and other public bodies. One would not have been surprised if this argument had been used by the friends of the proposition, as an answer to its principal difficulty. Coming from the opponents it is strange enough. What is urged as an objection is the safety-valve of the proposed system. If indeed all the high talent of the country *could* be drawn into the service of the government, a proposal tending to bring about that result might well inspire uneasiness. If every part of the business of society which required organized concert, or

large and comprehensive views, were in the hands of the government, and if government offices were universally filled by the ablest men, all the enlarged culture and practiced intelligence in the country, except the purely speculative, would be concentrated in a numerous bureaucracy, to whom alone the rest of the community would look for all things: the multitude for direction and dictation in all they had to do; the able and aspiring for personal advancement. To be admitted into the ranks of this bureaucracy, and when admitted, to rise therein, would be the sole objects of ambition. Under this *regime*, not only is the outside public ill-qualified, for want of practical experience, to criticize or check the mode of operation of the bureaucracy, but even if the accidents of despotic or the natural working of popular institutions occasionally raise to the summit a ruler or rulers of reforming inclinations, no reform can be effected which is contrary to the interests of the bureaucracy. Such is the melancholy condition of the Russian empire, as shown in the accounts of those who have had sufficient opportunity of observation. The Czar himself is powerless against the bureaucratic body; he can send any one of them to Siberia, but he cannot govern without them, or against their will. On every decree of his they have a tacit veto, by merely refraining from carrying it into effect. In countries of more advanced civilization and of a more insurrectionary spirit, the public, accustomed to expect everything to be done for them by the State, or at least to do nothing for themselves without asking from the State not only leave to do it, but even how it is to be done, naturally hold the State responsible for all evil which befalls them, and when the evil exceeds their amount of patience, they rise against the government, and make what is called a revolution; whereupon somebody else, with or without legitimate authority from the nation, vaults into the seat, issues his orders to the bureaucracy, and everything goes on much as it did before; the bureaucracy being unchanged, and nobody else being capable of taking their place.

A very different spectacle is exhibited among a people accustomed to transact their own business. In France, a large

part of the people, having been engaged in military service, many of whom have held at least the rank of non-commissioned officers, there are in every popular insurrection several persons competent to take the lead, and improvise some tolerable plan of action. What the French are in military affairs, the Americans are in every kind of civil business; let them be left without a government, every body of Americans is able to improvise one, and to carry on that or any other public business with a sufficient amount of intelligence, order, and decision. This is what every free people ought to be: and a people capable of this is certain to be free; it will never let itself be enslaved by any man or body of men because these are able to seize and pull the reins of the central administration. No bnreaucracy can hope to make such a people as this do or undergo anything that they do not like. But where everything is done through the bureaucracy, nothing to which the bureaucracy is really adverse can be done at all. The constitution of such countries is an organization of the experience and practical ability of the nation into a disciplined body for the purpose of governing the rest; and the more perfect that organization is in itself, the more successful in drawing to itself and educating for itself the persons of greatest capacity from all ranks of the community, the more complete is the bondage of all, the members of the bureaucracy included. For the governors are as much the slaves of their organization and discipline as the governed are of the governors. A Chinese mandarin is as much the tool and creature of a despotism as the humblest cultivator. An individual Jesuit is to the utmost degree of abasement the slave of his order, though the order itself exists for the collective power and importance of its members.

It is not, also, to be forgotten, that the absorption of all the principal ability of the country into the governing body is fatal, sooner or later, to the mental activity and progressiveness of the body itself. Banded together as they are—working a system which, like all systems, necessarily proceeds in a great measure by fixed rules—the official body are under the constant temptation of sinking into indolent routine, or, if they now and then desert that mill-horse round, of rushing

into some half-examined crudity which has struck the fancy of some leading member of the corps; and the sole check to these closely allied, though seemingly opposite, tendencies, the only stimulus which can keep the ability of the body itself up to a high standard, is liability to the watchful criticism of equal ability outside the body. It is indispensable, therefore, that the means should exist, independently of the government, of forming such ability, and furnishing it with the opportunities and experience necessary for a correct judgment of great practical affairs. If we would possess permanently a skillful and efficient body of functionaries—above all, a body able to originate and willing to adopt improvements; if we would not have our bureaucracy degenerate into a pedantocracy, this body must not engross all the occupations which form and cultivate the faculties required for the government of mankind.

To determine the point at which evils, so formidable to human freedom and advancement, begin, or rather at which they begin to predominate over the benefits attending the collective application of the force of society, under its recognized chiefs, for the removal of the obstacles which stand in the way of its well-being; to secure as much of the advantages of centralized power and intelligence as can be had without turning into governmental channels too great a proportion of the general activity—is one of the most difficult and complicated questions in the art of government. It is, in a great measure, a question of detail, in which many and various considerations must be kept in view, and no absolute rule can be laid down. But I believe that the practical principle in which safety resides, the ideal to be kept in view, the standard by which to test all arrangements intended for overcoming the difficulty, may be conveyed in these words: the greatest dissemination of power consistent with efficiency; but the greatest possible centralization of information, and diffusion of it from the center. Thus, in municipal administration there would be, as in the New England States, a very minute division among separate officers, chosen by the localities, of all business which is not better left to the persons directly interested; but besides this, there would be, in each

department of local affairs, a central superintendence, forming a branch of the general government. The organ of this superintendence would concentrate, as in a focus, the variety of information and experience derived from the conduct of that branch of public business in all the localities, from everything analogous which is done in foreign countries, and from the general principles of political science. This central organ should have a right to know all that is done, and its special duty should be that of making the knowledge acquired in one place available for others. Emancipated from the petty prejudices and narrow views of a locality by its elevated position and comprehensive sphere of observation, its advice would naturally carry much authority; but its actual power, as a permanent institution, should, I conceive, be limited to compelling the local officers to obey the laws laid down for their guidance. In all things not provided for by general rules, those officers should be left to their own judgment, under responsibility to their constituents. For the violation of rules, they should be responsible to law, and the rules themselves should be laid down by the legislature; the central administrative authority only watching over their execution, and if they were not properly carried into effect, appealing, according to the nature of the case, to the tribunals to enforce the law, or to the constituencies to dismiss the functionaries who had not executed it according to its spirit. Such, in its general conception, is the central superintendence which the Poor Law Board is intended to exercise over the administrators of the Poor Rate throughout the country. Whatever powers the Board exercises beyond this limit were right and necessary in that peculiar case, for the cure of rooted habits of maladministration in matters deeply affecting not the localities merely, but the whole community; since no locality has a moral right to make itself by mismanagement a nest of pauperism, necessarily overflowing into other localities, and impairing the moral and physical condition of the whole laboring community. The powers of administrative coercion and subordinate legislation possessed by the Poor Law Board (but which, owing to the state of opinion on the subject, are very scantily exercised by them), though perfectly justifiable

in a case of first-rate national interest, would be wholly out of place in the superintendence of interests purely local. But a central organ of information and instruction for all the localities would be equally valuable in all departments of administration. A government cannot have too much of the kind of activity which does not impede, but aids and stimulates, individual exertion and development. The mischief begins when, instead of calling forth the activity and powers of individuals and bodies, it substitutes its own activity for theirs; when, instead of informing, advising, and, upon occasion, denouncing, it makes them work in fetters, or bids them stand aside and does their work instead of them. The worth of a State, in the long run, is the worth of the individuals composing it: and a State which postpones the interests of *their* mental expansion and elevation to a little more of administrative skill, or of that semblance of it which practice gives, in the details of business; a State which dwarfs its men, in order that they may be more docile instruments in its hands even for beneficial purposes—will find that with small men no great thing can really be accomplished; and that the perfection of machinery to which it has sacrificed everything will in the end avail it nothing, for want of the vital power which, in order that the machine might work more smoothly, it has preferred to banish.

NOTES

[1] These words had scarcely been written, when, as if to give them an emphatic contradiction, occurred the Government Press Prosecutions of 1858. That ill-judged interference with the liberty of public discussion has not, however, induced me to alter a single word in the text, nor has it at all weakened my conviction that, moments of panic excepted, the era of pains and penalties for political discussion has, in our own country, passed away. For, in the first place, the prosecutions were not persisted in; and, in the second, they were never,

properly speaking, political prosecutions. The offense charged was not that of criticizing institutions, or the acts of persons of rulers, but of circulating what was deemed an immoral doctrine, the lawfulness of tyrannicide.

If the arguments of the present chapter are of any validity, there ought to exist the fullest liberty of professing and discussing, as a matter of ethical conviction, any doctrine, however immoral it may be considered. It would, therefore, be irrelevant and out of place to examine here, whether the doctrine of tyrannicide deserves that title. I shall content myself with saying that the subject has been at all times one of the open questions of morals; that the act of a private citizen in striking down a criminal, who, by raising himself above the law, has placed himself beyond the reach of legal punishment or control, has been accounted by whole nations, and by some of the best and wisest of men, not a crime, but an act of exalted virtue; and that, right or wrong, it is not of the nature of assassination, but of civil war. As such, I hold that the instigation to it, in a specific case, may be a proper subject of punishment, but only if an overt act has followed, and at least a probable connection can be established between the act and the instigation. Even then, it is not a foreign government, but the very government assailed, which alone, in the exercise of self-defense, can legitimately punish attacks directed against its own existence.

[2] Thomas Pooley, Bodmin Assizes, July 31, 1857. In December following, he received a free pardon from the Crown.

[3] George Jacob Holyoake, August 17, 1857; Edward Truelove, July, 1857.

[4] Baron de Gleichen, Marlborough Street Police Court, August 4, 1857.

[5] Ample warning may be drawn from the large infusion of the passions of a persecutor, which mingled with the general display of the worst parts of our national character on the occasion of the Sepoy insurrection. The ravings of fanatics or charlatans from the pulpit may be unworthy of notice; but the heads of the Evangelical party have announced as their principle, for the government of Hindoos and Mahomedans, that no schools be supported by public money in which the

Bible is not taught, and by necessary consequence that no public employment be given to any but real or pretended Christians. An Under-Secretary of State, in a speech delivered to his constituents on the 12th of November, 1857, is reported to have said: "Toleration of their faith" (the faith of a hundred millions of British subjects), "the superstition which they called religion, by the British Government, had had the effect of retarding the ascendency of the British name, and preventing the salutary growth of Christianity. . . . Toleration was the great corner-stone of the religious liberties of this country; but do not let them abuse that precious word toleration. As he understood it, it meant the complete liberty to all, freedom of worship, *among Christians, who worshipped upon the same foundation*. It meant toleration of all sects and denominations of *Christians who believed in the one meditation*." I desire to call attention to the fact, that a man who has been deemed fit to fill a high office in the government of this country, under a liberal Ministry, maintains the doctrine that all who do not believe in the divinity of Christ are beyond the pale of toleration. Who, after this imbecile display, can indulge the illusion that religious persecution has passed away, never to return?

[6] *The Sphere and Duties of Government*, from the German of Baron Wilhelm von Humboldt, pp. 11–13.

[7] Sterling's *Essays*.

[8] There is something both contemptible and frightful in the sort of evidence on which, of late years, any person can be judicially declared unfit for the management of his affairs; and after his death, his disposal of his property can be set aside, if there is enough of it to pay the expenses of litigation —which are charged on the property itself. All the minute details of his daily life are pried into, and whatever is found which, seen through the medium of the perceiving and describing faculties of the lowest of the low, bears an appearance unlike absolute commonplace, is laid before the jury as evidence of insanity, and often with success; the jurors being little, if at all, less vulgar and ignorant than the witnesses; while the judges, with that extraordinary want of knowledge of human nature and life which continually astonishes us in

English lawyers, often help to mislead them. These trials speak volumes as to the state of feeling and opinion among the vulgar with regard to human liberty. So far from setting any value on individuality—so far from respecting the rights of each individual to act, in things indifferent, as seems good to his own judgment and inclinations, judges and juries cannot even conceive that a person in a state of sanity can desire such freedom. In former days, when it was proposed to burn atheists, charitable people used to suggest putting them in a madhouse instead: it would be nothing surprising now-a-days were we to see this done, and the doers applauding themselves, because, instead of persecuting for religion, they had adopted so humane and Christian a mode of treating these unfortunates, not without a silent satisfaction at their having thereby obtained their deserts.

[9] The case of the Bombay Parsees is a curious instance in point. When this industrious and enterprising tribe, the descendants of the Persian fire-worshipers, flying from their native country before the Caliphs, arrived in Western India, they were admitted to toleration by the Hindoo sovereigns, on condition of not eating beef. When those regions afterwards fell under the dominion of Mohammedan conquerors, the Parsees obtained from them a continuance of indulgence, on condition of refraining from pork. What was at first obedience to authority became a second nature, and the Parsees to this day abstain both from beef and pork. Though not required by their religion, the double abstinence has had time to grow into a custom of their tribe; and custom, in the East, is a religion.